

Civil Justice Reform Act  
Advisory Group  
for the Middle District  
of Tennessee

**FINAL**

**REPORT**

**VOLUME I**  
**of**  
**FINAL REPORT**

**Civil Justice Reform Act Advisory Group  
for the Middle District of Tennessee**

November, 1993

**REPORT OF THE**  
**CIVIL JUSTICE REFORM ACT ADVISORY GROUP**  
**FOR THE MIDDLE DISTRICT OF TENNESSEE**

November 1993

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**VOLUME I**

**Civil Justice Reform Act Advisory Group  
for the Middle District of Tennessee**

## EXECUTIVE SUMMARY

Based on the extensive collection, study, review and analysis of data and interviews with the Court and Court personnel, the Advisory Group determined that the civil docket in this District is in relatively good shape, although there are areas in which undue cost and delay could be avoided and disposition of civil cases expedited. The Advisory Group identified the principal causes of cost and delay in civil litigation in the Middle District of Tennessee and proposes recommended solutions addressed to those specific findings as follows:

1. Many of the causes of cost and delay in this District appear to stem from the current scheduling order practice under Local Rule 11. Counsel are required to plan a schedule for the whole case at its outset, before much is known about how the case will develop factually or legally. Typically, the scheduling order drafted by the parties is adopted by the Court without significant review. Except for the trial date, compliance with the schedule is rarely monitored, and deadlines are routinely extended informally or with Court approval. All too often the schedules developed by the parties are pro forma and unrealistic, leading to inadequate preparation and postponement of the resolution of the case.

The Advisory Group recommends that the Court adopt a system of customized case management, by which each case would be assigned a case manager who will work directly with counsel to assess when proceedings are necessary to dispose of the individual case (i.e., discovery, dispositive motions, settlement conferences, and trial), to schedule those proceedings in an orderly and efficient manner, and to monitor compliance with the schedule.

2. The practice of referring dispositive motions to Magistrate Judges unduly increases cost and delay. It requires duplication of time on both the part of the Magistrate Judges and the District Judges who review de novo the Magistrate Judges' Reports and Recommendations. It requires additional expense to the parties by requiring additional briefs and, in some instances, duplicate hearings before the Magistrate Judge and the District Judge. However, the Advisory Group found no problems associated with cost and delay in referrals of prisoner cases and Title VII cases to Magistrate Judges.

The Advisory Group recommends that, except in prisoner cases, Social Security cases, and Title VII cases, dispositive motions be resolved in the first instance by the Article III Judges and that, except under very rare circumstances, dispositive motions in other civil cases not be referred to Magistrate Judges.

3. Delays in rulings on dispositive motions cause undue delay and expense. Generally, discovery and other pretrial preparation continue during the pendency of dispositive motions. This results in excessive and unnecessary discovery. In addition, dispositive motions are often unresolved as the trial date approaches, causing rescheduling of trial dates.

The Advisory Group recommends that dispositive motions be resolved in the first instance by the Article III Judges; that the case manager establish and supervise a schedule for filing briefs and holding oral argument; that, as a general rule, discovery be stayed during the pendency of dispositive motions; that trial dates not be scheduled until dispositive motions are resolved; and that monthly reports of pending dispositive motions be generated.

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4. Discovery practices cause undue cost and delay in some situations. Not only is discovery not stayed during the pendency of dispositive motions, but there is also no staging of discovery for particular purposes, such as limiting discovery to that which is needed to engage in settlement negotiations.

The Advisory Group recommends that, absent special circumstances, discovery be stayed during the pendency of dispositive motions provided for in the case management order. The Advisory Group further recommends that, through customized case management, discovery be staged according to the needs of each stage of the case.

5. There is no formal system for exploring settlement early in the life of a case. Many cases settle late in the proceedings and at least some could have settled earlier in the case. This prolonged life span of cases results in unnecessary expense.

The Advisory Group recommends the adoption of the proposed local rule that provides for settlement conferences conducted by the Court, that authorizes the Court to refer parties to alternative dispute resolution programs provided by the Court with or without their consent, and that encourages the Court and the parties to utilize alternative dispute resolution techniques not provided by the Court. The Advisory Group further recommends that the Court appoint an Alternative Dispute Resolution Committee to apprise the Court of developments in the area of ADR, and, in particular, adoption by the Tennessee Courts of recommendations by the Tennessee ADR Commission.

6. Cases are rarely tried on the dates when they are set. Trial dates initially scheduled are frequently unrealistic and therefore the Court's trial calendar is unreliable. Cases are scheduled on the trial docket before it is determined that it is necessary to have trials and before it is known how the cases will develop legally and factually. Last minute settlements, unresolved dispositive motions, and the desire to avoid unnecessary trial preparation of cases on the trailer docket all result in trials being continued multiple

times. Resetting trial dates causes unnecessary delay and undue cost in duplication of trial preparation.

The Advisory Group recommends that cases be set for trial only when they are ready to be tried, i.e., when it is determined that dispositive issues are resolved and that possibilities of settlement have been explored. The Advisory Group further recommends that each Article III Judge set aside one week per month as a "civil trial week," in which cases that have been identified as ready for trial will be firmly set.

REPORT OF THE  
CIVIL JUSTICE REFORM ACT ADVISORY GROUP  
FOR THE MIDDLE DISTRICT OF TENNESSEE

November 1993

**REPORT OF THE CIVIL JUSTICE REFORM ACT ADVISORY GROUP  
FOR THE MIDDLE DISTRICT OF TENNESSEE**

**I. INTRODUCTION**

Pursuant to 28 U.S.C. § 478, the Middle District of Tennessee appointed a 28 member Civil Justice Reform Act Advisory Group. The Advisory Group was composed of attorneys and non-attorneys and reflected the diverse litigation needs of this District. The attorneys represented small and large firms, criminal and civil practice, public service and government practice, and a variety of specialized litigants. See Appendix A for a listing of the members of the Advisory Group. The Court appointed R. Dale Grimes to chair the Advisory Group and appointed Juliet Griffin, Clerk of the Court, as the Reporter to the Advisory Group.

**II. OVERVIEW OF THE COURT**

The Middle District of Tennessee is one of three United States District Courts in the State of Tennessee. It includes 32 counties and is divided into three divisions: the Nashville Division, the Columbia Division, and the Northeastern Division. The Columbia division is not staffed either with a resident judge or with Clerk's office personnel. Judicial officers and staff travel to the Columbia Division to hold proceedings in the courthouse in Columbia. The only Senior Judge in this District sits in the Northeastern Division in Cookeville, Tennessee, and there is one full time deputy-in-charge in the Clerk's office in Cookeville. All four active District Judges and the two full-time Magistrate Judges sit in the headquarters office in Nashville. The newest active District Judge filled a recently authorized fourth judgeship when he took the bench in April of 1992.<sup>1</sup>

*See Appendix C*  
**III. ASSESSMENT OF CONDITION OF THE CIVIL AND CRIMINAL DOCKET**

The Advisory Group devoted an extensive and intensive effort to collect data to determine the condition of the civil and criminal dockets in this District and to assess the principal causes of cost and delay. The specific methodology utilized by the Advisory Group is detailed in Appendix C.

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<sup>1</sup> The listing of the judicial officers in this District with pertinent information regarding their tenure on the bench is attached in Appendix B.

A. Assessment of Criminal Docket

Between 1985 and 1992, the number of criminal cases resulting in trials has doubled, as has the number of hours that the Judges spend in court on all criminal matters, including both trials and other proceedings in criminal cases, such as plea hearings, sentencing hearings, and pre-trial suppression and other motion hearings. During the same period, the Court's in-courtroom workload has gradually shifted from an approximately 3 to 1 ratio of time spent on civil as opposed to criminal matters to an approximately equal distribution between time spent on civil and criminal matters.<sup>2</sup>

A literal sea change in federal criminal law occurred during the 1980s, which, when coupled with changes in national and local prosecutorial policies in recent years,<sup>3</sup> has contributed to the burgeoning criminal docket. Most civil lawyers in and outside of the Advisory Group have not yet detected that substantially less time is available for civil matters, and certainly the problem has not reached the dire proportions reported by other districts. Assuming that recent trends continue unabated, however, it is likely that this pressure will become fully perceptible in the near future. This impingement represents a major present and future cause of avoidable and unnecessary cost, delay, and interference with the just adjudication of civil disputes.

B. Assessment of the Civil Docket<sup>4</sup>

Although there is no statutory definition of "cost" or of "delay," the Advisory Group assumed that the Civil Justice Reform Act was directed at "undue cost" and "undue delay." As a result of its review and analysis, the Advisory Group determined that this District is not plagued with cost and delay problems, that undue cost and delay do not occur in every case by any means, and that some cases proceed expeditiously. In other instances, some cases lie dormant of necessity, for example when awaiting resolution of the same issues in another forum, and, although there may appear to be delay in those cases, there is, in fact, no "undue delay." At least for some cases, therefore, the principle of "if it ain't broke, don't fix it" should apply.

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<sup>2</sup> For an analysis of the data compiled to assess the criminal docket, see Section I of Appendix D.

<sup>3</sup> See Section II of Appendix D.

<sup>4</sup> The following assessment relates to general civil cases normally covered under the current Local Rule 11, and does not relate to specialized cases, such as prisoner litigation. The report of the Advisory Group on prisoner litigation in this District is contained in Appendix E.

Having concluded that this District does not suffer from extensive cost and delay problems, the Advisory Group did confirm that many cases are subjected to undue cost and delay without any case-driven justification. There are also systemic flaws that contribute to undue cost and delay both system-wide and as they apply to particular cases. Absent a cost and delay reduction plan, it does not appear that the Middle District of Tennessee would falter under the weight of excessive cost and delay. However, the Advisory Group identified procedures and/or lack of procedures that contribute to unnecessary cost and delay that should be addressed by a cost and delay reduction plan.

### 1. Historic Management Philosophy

Following the 1983 amendment to Rule 16 of the Federal Rules of Civil Procedure, this District adopted current Local Rule 11, effective January 1, 1985, that requires parties in civil cases covered under that rule to submit a proposed scheduling order early in the case.<sup>5</sup> That Rule embodies the general management philosophy of this District. The premise of Rule 11 is that, at the outset of litigation, lawyers would discuss, agree upon, and file an order setting out a schedule for the litigation of the case.

There is unanimity among the Judges that the primary responsibility for adhering to the scheduling order, and thus for managing the pretrial phase of civil litigation, rests with the attorneys. The primary management technique used by the Court is to set "early" and "firm" trial dates, and to leave case management in the hands of the attorneys. The data and studies generated by the Advisory Group strongly suggest that this management technique has not been effective, and that a more active judicial role in case management is required. Thus, the Advisory Group has been guided by the belief that, with greater judicial involvement in case management, cost and delay would be reduced.

Pursuant to Local Rule 11 scheduling orders, trial dates are, in fact, often set "early." They are generally not set "firmly," however. The evidence overwhelmingly supports the conclusion that it is the exception, not the rule, that a case actually is tried on the date the trial originally is set. This fact would not, in and of itself, be problematic if most cases were settled prior to the specified early trial date. The evidence is, however, to the contrary. In fact, trial dates are set two, three, and often more times during the course of a lawsuit.<sup>6</sup> These shifting trial dates and the "phantom calendar"

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<sup>5</sup> Local Rule 11(b)(5) requires that the proposed scheduling order be submitted within 14 days after issue is joined or within 80 days from the filing of the complaint, whichever occurs soonest.

<sup>6</sup> See Exhibit 10 to Appendix C.

they create not only cause management difficulties, but also delay final resolution of cases.

The evidence also suggests that attorneys are not rigorously managing their cases. Motions to amend scheduling orders and extend established dates are extremely common, and it is the general practice of all judges to grant such requests. In practice, the scheduling orders have little or no meaning, and that seriously undermines the utility of the scheduling order as a case management tool.

The statistics certainly support the view that the Court has been successful in moving litigation along. Despite the favorable statistics, however, three general observations can be made. First, having a management plan implemented by a local rule that is honored primarily in the breach is open to question. Second, simply because the disposition rates are good on a comparative basis does not mean that this District could not do better and thus avoid undue cost and delay. Finally, as the criminal docket increasingly becomes a problem, the District may not continue to be so fortunate with regard to its disposition rate in civil cases. If improved management can improve the situation generally, it will benefit both the bench and the litigants and reduce cost and delay.

## 2. References to Magistrate Judges

From the initial discussions of the Advisory Group forward, a commonly voiced concern was that the practice of referring matters to Magistrate Judges contributed to cost and delay. The investigation by the Advisory Group bears out that assumption.

The practices of the active District Judges differ greatly with regard to references to Magistrate Judges. Judge Wiseman refers very little at all to the Magistrate Judges for their disposition, other than Title VII cases<sup>7</sup> and prisoner cases. Judge Nixon generally refers many matters to the Magistrate Judges. Not only do these referrals occur in many cases, but they are also broad in scope, often authorizing the Magistrate Judge to handle all pretrial matters, including initial rulings on dispositive motions. Judge Higgins appears to refer matters to the Magistrate Judges as frequently as Judge Nixon, but his referrals are generally narrower in scope. Judge Higgins generally refers dispositive motions to Magistrate Judges for initial review and generation of Reports and Recommendations. These varying reference patterns are evident in Exhibit 10 to Appendix C.

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<sup>7</sup> All District Judges in the Middle District refer Title VII cases to Magistrate Judges, as required under 42 U.S.C. § 2000-5(f)(5)(e), if they have not been scheduled for trial within 120 days after issue has been joined.

Although referrals of some matters to Magistrate Judges can assist in the efficient management and resolution of cases, references of dispositive motions contribute to cost and delay. The concern expressed by members of the Bar is that reference to the Magistrate Judge of dispositive matters inevitably contributes to cost, and likely also to delay, in civil litigation. When non-dispositive matters are referred, the Magistrate Judge's resolution is, for all intents and purposes, the last word.<sup>8</sup> The Magistrate Judge's resolution of dispositive matters is not, however, the last word. It is common practice for parties to file objections to the rulings of the Magistrate Judges on dispositive motions for de novo review by the District Judge. Thus, clients are subjected to paying for the same matter to be briefed twice, and the ultimate determination of the litigation is delayed while the motion is resolved not once, but twice.

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It appears to be a fairly common practice to refer a dispositive motion to a Magistrate Judge for a preliminary opinion, which provide some guidance to the District Judge in resolving the case. Thus, cases are frequently referred to the Magistrate Judges when the briefs of the parties are less than adequate.<sup>9</sup> In addition, referrals are made to Magistrate Judges when the District Judge's own docket is backed up and the Magistrate Judge is believed to be able to consider the matter before the District Judge could. From the perspective of the litigants, however, cases are simply returned to the over-crowded docket of the District Judge once the Magistrate Judge issues a Report & Recommendation. The marginal advantages of receiving a first opinion and eliminating the need to work on a matter for the time being are gained at a great cost. The anecdotal evidence, interviews with the Judges and Court personnel, and the data generated all support the conclusion that wholesale reference of dispositive matters to Magistrate Judges leads to unnecessary cost and delay, and is not an effective use of the valuable resources that the Magistrate Judges provide.

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<sup>8</sup> The standard of review of a Magistrate Judge's decision on any pretrial matter except those specifically excluded under 28 U.S.C. § 636(b)(1)(A) is "clearly erroneous or contrary to law." See also Rule 72(a) of the Federal Rules of Civil Procedure. The civil matters specifically excluded under that section, i.e., motions for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action, are subject to de novo review by the District Judge. See 28 U.S.C. § 636(b)(1)(B)-(C); see also Fed. R. Civ. P. 72(b).

<sup>9</sup> This might result in streamlining the dispositive motion process if the District Judges did not often rework entirely the work of the Magistrate Judges.

### 3. Resolution of Dispositive Motions

Based on a review of the statistics compiled semi-annually on pending motions and based on data generated and contained in Exhibits 9 and 11 to Appendix C, coupled with anecdotal evidence, the Advisory Group concluded that dispositive motions are often not resolved in a timely fashion, leading to two potential difficulties and sets of expenses. First, delayed resolution of dispositive motions leads to further and frequently unnecessary discovery or litigation in a case. Second, unresolved dispositive motions are "bumping up against" trial dates, causing continuances to be sought and granted.

It is impossible to determine how many long-pending motions are too many. In an ideal world, perhaps there would never be any motions pending over six months, but this is not an ideal world. Nonetheless, there have been a fair number of motions pending for quite some time and a few motions pending for an extraordinary length of time.

The causes for long-pending motions are varied, but can be attributed, at least in part, to three phenomena: (1) references of dispositive motions to Magistrate Judges; (2) a lack of prioritization within chambers that would encourage resolution of the longest pending motions; and (3) the natural tendency to delay resolution on especially complicated matters, particularly those involving multiple parties and cross-motions.

Although it may be empirically impossible to determine whether or not there are too many long-pending motions, it was fairly simple to conclude that there definitely is some problem in this District with unresolved dispositive motions pending shortly before or on the scheduled trial date. The Advisory Group was subjected to a barrage of anecdotal information, supported by the data generated to test this proposition. As indicated in Exhibits 9 and 11 to Appendix C, the evidence leads to the conclusion that there are dispositive motions regularly pending as trial dates approach, and that trial dates often are shifted time and again while dispositive motions are unresolved.

A substantial portion of the difficulty in this area results from the practices of the Bar, although attorneys tend not to recognize their contributory role. First, when scheduling orders are submitted, attorneys often do not provide enough time for the Court to resolve dispositive motions. Thus, attorneys schedule a dispositive motion cut-off date, and a trial date, but neglect to provide a reasonable period of time to resolve a dispositive motion.<sup>10</sup> Second, responses to motions are rarely timely filed.

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<sup>10</sup> Local Rule 11(b)(5) requires that the proposed scheduling order include a deadline for filing dispositive motions that, absent unusual circumstances, should be within 15 days after the discovery deadline, which, absent unusual circumstances, should be within 60 days of the final pretrial conference.

By the same token, the Bar alone is not responsible for the problem. First, there are the delays in resolving dispositive motions discussed above. Second, there do not appear to be very good systems in place in chambers to attend to the problem of motions remaining unresolved as trial dates approach.

It has been suggested that the difficulty is that attorneys file too many dispositive motions. There is no doubt some grain of truth to this proposition, particularly in light of the frequent law clerk complaint that papers filed with the Court often fail to cite governing precedent and that many motions were frivolous because proper research had not been done. By the same token, the United States Supreme Court<sup>11</sup> appears to have made it clear that dispositive motions are to be encouraged. Thus, it hardly seems an appropriate solution to limit the filing of dispositive motions.

The question of whether earlier resolution of pending motions could obviate the need for discovery and other pretrial preparation is more complicated. Motions to dismiss regularly are filed, often without serious hope for success. On the other hand, there are very serious threshold motions to dismiss or for summary judgment. All told, the area of dispositive motions resolution cries out for attention. Not every motion will get resolved as quickly as the attorney or the litigant might like, and it is inevitable that some pending motions will delay trial dates. But improvement clearly seems possible.

#### 4. Unnecessary Discovery

It is widely believed that excessive discovery is the single greatest factor contributing to undue cost in federal litigation.<sup>12</sup> Although the Advisory Group found no hard evidence of discovery abuse in this District,<sup>13</sup> it can be reasonably inferred that there is unnecessary discovery. Discovery normally proceeds during the pendency of

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<sup>11</sup> See *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986); *Anderson Liberty Lobby, Inc.*, 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); *Matsushita Electric Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986).

<sup>12</sup> See, e.g., Memo from Judge Robert M. Parker, immediate past Chair of the Committee on Court Administration and Case Management of the Judicial Conference of the United States, dated October 22, 1992, to all Chief Judges and Chairs of CJRA Advisory Groups.

<sup>13</sup> Although the Advisory Group reviewed the attorney questionnaire responses and docket sheets for incidence of discovery abuse, there was little to suggest that unnecessarily protracted or unbounded discovery is a problem in this District.

dispositive motions.<sup>14</sup> When rulings on dispositive motions are delayed, discovery continues even when the dispositive motions revolve around threshold issues that are the subject of the continuing discovery. The result is unnecessary, and therefore excessive, cost to the litigants that would have been avoided if the dispositive motions were resolved earlier in the case.

There is no evidence that discovery is staged as necessary for the particular stages of a case, for example, the resolution of dispositive motions or settlement negotiations. Although there are times when extended discovery is necessary before entering into settlement negotiations, it does not appear that either the Court or the bar attempt to place any limits on discovery at any stage.

## 5. Calendaring and Interruptions

Two general sorts of concerns were expressed in discussions revolving around practices of trial calendaring and interruptions of trials. First, attorneys expressed concern about the number of times that an ongoing trial was interrupted in order to deal with matters in criminal cases, settlement conferences, and other various civil matters. Second, concern was expressed about the number of cases that were continued because, although they were calendared for a certain week, the number of cases set in that week precluded the cases from going to trial. Obviously, both of these concerns could give rise to serious problems of cost and delay.

Although the Advisory Group's study of these matters indicated that there were difficulties, they did not, in fact, turn out to be the precise difficulties identified by the Bar. It appeared, on examination, that there were significant difficulties with the way in which cases are calendared for trial in this District. See Exhibit 11 to Appendix C. Trial interruptions, on the other hand, seemed to be less of a problem than is perceived. See Exhibit 12 to Appendix C.

All members of the Court are sensitive to the problem of trial interruptions and do what they can to ameliorate it. It appears that the Judges and their staffs attempt to schedule potential interruptions at the beginning and end of the day, during lunch, or on days not scheduled for trial. Nonetheless, matters do arise during trials that require attention, and it is apparent that criminal matters account for a fair amount of the interruptions.

In sharp contrast to the trial interruption problem is the trial calendaring process. The system used for setting trials in this District results as often as not in far fewer cases

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<sup>14</sup> Absent an order to the contrary, the filing of a dispositive motion does not stay discovery. See Local Rule 11(b)(1).

being tried than could be tried if there were a more efficient system. In addition, the trial calendars remain cluttered with "phantom" trial dates.

Although practices differ somewhat, the general procedure is that courtroom deputies calendar cases in available slots, scheduling several trials during any given week. Trial dates are set far in advance and are inevitably shifted several times before the case even appears ready for trial.

Scheduling trials long before it is clear that the case will require or be ready for a trial leads to dockets that are largely imaginary or "phantom." Thus, for example, there may be six cases set for one week, but, by the beginning of that week, three of the cases will have settled, and three of the cases will have been continued, one because the case was not ready for trial and the other two because the parties were not satisfied with their place on the trailer docket. No attorney likes to be the sixth trial set on the trial calendar. There is nothing unreasonable in this concern. Trial preparation is expensive, witnesses must be flown in, and experts must be paid, etc. Preparing to go to trial only to have the trial continued because a previously set case goes forward is extremely and unnecessarily costly, and attorneys are wise to try to avoid the problem. Thus, attorneys often call courtroom deputies to determine where their cases are on the trailer docket and to determine whether the cases set before theirs have settled or been continued. If, in the attorney's judgment, his or her case is too far down on the trailer docket actually to obtain a trial that week, the attorney simply requests a new trial date. The inevitable result of phantom dates and attorney shifting is that surprisingly few cases actually are tried, and there are many days in which courtrooms sit dormant although there are cases waiting to be tried. Thus, it is less true than the Bar suggested that cases are actively "bumped" by the Court, and much more true that the District is not nearly as efficient as it could be in trying cases that are ready for trial.

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## 6. Bench Trials

This District deviates somewhat from other districts with regard to its practice on bench trials. Cases tried to the Court in this District are rarely resolved by findings of fact and conclusions of law delivered from the bench. This contributes to cost and delay in several ways. First, there is an obvious delay factor when the Court decides not to dictate conclusions from the bench, but to issue a written opinion at a later date. Second, it is generally the practice to request or permit the filing of proposed findings of fact and conclusions of law.<sup>15</sup> In preparing such findings and conclusions, the attorneys

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<sup>15</sup> See Rule 12(i) of the Local Rules of Court, which directs each party to submit proposed findings of fact and conclusions of law within 15 days after a non-jury trial, unless the Judge has required submission of proposed findings of fact and conclusions of law prior to trial.

normally order the transcript of the trial. Requiring the filing of findings of fact and conclusions of law and the inevitable ordering of trial transcripts unnecessarily contributes both to cost and delay.

#### 7. Absence of Formal Methods for Invoking Alternative Dispute Resolution

This District has successfully used the technique of settlement conferences, normally held before judicial officers who are not assigned to the cases. Although a significant portion of the bar is aware of the availability of settlement conferences, there is no formal procedure outlined in a local rule or elsewhere for invoking a settlement conference. Similarly, there are no procedures to encourage other methods of alternative dispute resolution.

Cases that settle on the eve of a scheduled trial date not only disrupt the Court's calendar, but also often result in unnecessary discovery and pretrial preparation that could be avoided if they had settled earlier in the proceedings. Without inducement by the Court to enter into settlement negotiations and to consider other alternative dispute resolution techniques, the ultimate resolution of cases is often delayed and unnecessary costs of discovery and pretrial preparation incurred.

#### C. Role of Court Staff

##### 1. Courtroom Deputies

Although technically part of the Clerk's Office staff, the courtroom deputies work in the Judges' chambers. Their responsibilities differ somewhat, depending in part on the Judge for whom they work. The Advisory Group was impressed with the dedication and ability of the courtroom deputies in this District. They are extremely knowledgeable, and well-attuned to the litigation practices in the District. Day-to-day civil administration of civil cases falls primarily upon the courtroom deputies. They do not make broad policy, which is appropriately a judicial role, but they follow the progress of cases, coordinate the paper flow, and calendar court proceedings. Perhaps the best description of the role of courtroom deputies is that of micro-management, which is appropriately delegated to them.

Nonetheless, a tremendous amount of courtroom deputy time is spent in Court while the Judges are on the bench. It is common practice in this District for the courtroom deputy to be present for a large percentage of the time that the Judge is on the bench. The Advisory Group believes that the need for courtroom deputy attendance in the courtroom is overstated and that, much of the time, courtroom deputies could perform

a far more valuable service if they were left to perform critical case management functions.

Allowing courtroom deputies to spend less time in the courtroom should not impede the smooth functioning of courtroom proceedings. First, the primary roles of the courtroom deputy in the courtroom appears to be marking exhibits and swearing witnesses. The Advisory Group wonders whether these tasks could be assigned to the court reporters, who must be present in the courtroom and who are assigned these responsibilities in other forums. Second, speakers are installed in the courtroom deputies' offices so that they can hear what is occurring in the courtroom. Should their presence be required, it is a simple matter for them to step into the courtroom. The Advisory Group concludes that case management would improve if courtroom deputies were free to spend more time monitoring the case files and the Court's calendar. In addition, if innovative case management practices are implemented, case management time for the courtroom deputies will be at a premium.<sup>16</sup>

## 2. Law Clerks

The level of supervision of law clerks by the Judges for whom they work differs from chambers to chambers. Despite these variances, it appears that closer supervision could speed the efficient resolution of civil litigation by balancing the prioritization of emergency work that must be dealt with immediately with attention to matters pending for long periods of time.

## 3. Clerk's Office

During the study period, the Clerk's office consisted of 29 employees. The Advisory Group was impressed with the staff of the Clerk's office, who are helpful, dedicated, and knowledgeable, who show interest in and loyalty to their jobs and who appear to be doing an immense job quite well. Civil cases are filed in person or by mail in the Clerk's office. The office provides personnel to assist attorneys filing papers and provides some written assistance. The initial responsibility for cases falls to the intake clerks. Upon receipt of a filing, an intake clerk checks to insure that the documents are in order and that the proper fees accompany the complaint. The intake clerks are also responsible for numerous dealings with the public, such as providing copies of Court documents, handling attorney admissions, and maintaining a miscellaneous docket.

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<sup>16</sup> In concluding that courtroom deputies should be relieved from substantial in-court duties to allow for sufficient time to devote to case management, the Advisory Group suggests that consideration be given to changing the title of these deputy clerks. The Advisory Group recognizes, however, that the nomenclature is not locally developed, but is developed on a national level.

After a case is randomly assigned to a District Judge and Magistrate Judge through an automated system,<sup>17</sup> the case is logged into an inventory book. An intake clerk then opens the case on the automated computer system and gives the case file to the docket clerk assigned to process the papers filed in cases assigned to the specific Judge.

Unless a Judge orders otherwise, all other filings in the case also come to the front counter, either by personal delivery or by mail. When documents are presented for filing, they are stamped and then given to the docket clerk. Attorneys generally inform the intake clerk when a Judge needs to see a document immediately. However, by standing practice or in specific instances, Judges may request that documents be provided directly to the courtroom deputy. If it is appropriate for these documents to be entered on the docket, the courtroom deputy forwards them to the docket clerk for entry, who in turn returns them to the courtroom deputy after entry.

It is the job of the docket clerks to enter documents on the computer as they are submitted. Similarly, the docket clerks enter orders prepared by the Judges and mail copies of orders to the parties in the cases. The civil docket system is fully automated and includes all cases pending as of July 1, 1991. Information entered on the docket is available to Clerk's office personnel from terminals at their desks and to the public via a public access terminal at the front counter area. Ultimately, attorneys will be able to access the docket from their office computers. The Clerk's office staff includes a systems manager who is responsible for maintaining this automated system.

The Advisory Group identified areas in which changes in the Clerk's office might improve the handling of civil cases. First, the system for handling telephone calls is somewhat haphazard and distracting. There is no central number for the Clerk's office nor is there a receptionist who screens calls and passes them on to the appropriate individual. Therefore, Clerk's Office personnel are often distracted from their other responsibilities in order to answer phone calls, many of which they then need to forward to the correct person. Second, unlike many Clerk's offices, there is no central filing system. Rather, each courtroom deputy maintains the files pending before each Judge. As a result, there is a substantial amount of document movement of cases in and out of the courtroom deputies' offices. Thus, an unnecessary amount of time is spent trying to locate documents and case files. Despite the initial concern in this area, the Advisory Group determined that it may not make sense to disturb the current filing system. Space limitations may prevent a central filing system, and the Judges and their staffs prefer the current system. Third, wherever possible, there should be a uniform flow of paper from

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<sup>17</sup> Some cases are not randomly assigned but rather are assigned to a particular Judge. For example, Social Security cases, land condemnation cases, and Bankruptcy matters are assigned to specific Judges.

the Clerk's office to the Judges' chambers and, unless necessary, counsel should be restricted from submitting papers directly to chambers.

#### D. Alternative Case Management Practices

During the time the Advisory Group reviewed the case management practices of this District, Chief Judge Nixon began holding early status conferences with counsel in some of his civil cases, with an eye toward judicial supervision of the scheduling order. Judge Echols appears to have adopted this practice as well. Judge Nixon also engaged in an experiment in which he and Magistrate Judge Haynes co-managed cases. Because of the relatively few cases involved in the experiment, the Advisory Group was unable to assess whether these management practices were always successful in reducing cost and delay due to the relatively few cases and brief period in which they have been used.

The essence of the co-management system is that the Magistrate Judge directs the case through pretrial matters, referring to the District Judge both dispositive motions and the case for trial. The experimental plan was intended to encourage the Magistrate Judge to take a fairly aggressive position in managing pretrial proceedings. For example, discovery is limited to a "first wave." Thereafter, the Magistrate Judge meets with the parties to discuss the extent of further discovery required, the possibility of filing dispositive motions, and the possibility of settling the case. Under the plan, when dispositive motions are filed, they are referred to the District Judge for resolution. Cases are not calendared for trial until it becomes clear that they likely will not settle.

This alternative case management plan is designed to address much of the difficulty in the timely resolution of dispositive motions by placing the District Judge in the role of deciding cases and the Magistrate Judge in the role of managing them. Finally, the system is designed to eliminate unnecessary discovery, assist in the prompt settlement of cases, and avoid the serious calendaring problems.

#### E. Prisoner Litigation

Since 1985, cases brought by inmates incarcerated in federal, state, and local penal institutions has accounted for between 22 and 38 percent of the civil cases filed annually in this District. Because of the incidence of prisoner litigation in this District, a special committee of the Advisory Group was assigned the responsibility of assessing prisoner litigation. The report of that committee is included in Appendix E.

#### IV. IDENTIFICATION OF TRENDS IN CASE FILINGS AND DEMANDS PLACED ON THE COURT'S RESOURCES

A substantial portion of the mandate of 28 U.S.C. § 472(c)(1)(B), as well as 28 U.S.C. § 472(b)(1), involved the review and analysis of statistical information. From the perspective of a statistical analysis, the condition of this District's docket appears satisfactory in comparison to the condition for the docket in the past and in comparison to the dockets in other districts. It appears that all phases of criminal cases are handled in a timely manner. There does not appear to have been an increase in the number of criminal cases of a particular type. The median times for filing to disposition and from the time the case is at issue until trial in civil cases are lower than the national average and the number of cases over three years old is not significant. The life expectancy of civil cases is below the national average. For a review and analysis of the data, see Appendix F.

#### V. SUMMARY OF PRINCIPAL CAUSES OF COST AND DELAY IN CIVIL LITIGATION IN THIS DISTRICT

Based on the extensive collection, study, review and analysis of data and interviews with the Court and Court personnel, the Advisory Group identified the principal causes of cost and delay in civil litigation in the Middle District of Tennessee as follows:

1. Many of the causes of cost and delay in this District appear to stem from the current scheduling order practice under Local Rule 11. Counsel are required to plan a schedule for the whole case at its outset, before much is known about how the case will develop factually or legally. Typically, the scheduling order drafted by the parties is adopted by the Court without significant review. Except for the trial date, compliance with the schedule is rarely monitored, and deadlines are routinely extended informally or with Court approval. All too often the schedules developed by the parties are pro forma and unrealistic, leading to inadequate preparation and postponement of the resolution of the case.

2. The practice of referring dispositive motions to Magistrate Judges unduly increases cost and delay. It requires duplication of time on both the part of the Magistrate Judges and the District Judges who review *de novo* the Magistrate Judges' Reports & Recommendations. It requires additional expense to the parties by requiring additional briefs and, in some instances, duplicate hearings before the Magistrate Judge and the District Judge. However, the Advisory Group found no problems associated with cost and delay in referrals of prisoner cases, Social Security cases, and Title VII cases to Magistrate Judges.

3. Delays in rulings on dispositive motions cause undue delay and expense. Generally, discovery and other pretrial preparation continue during the pendency of dispositive motions. This results in excessive and unnecessary discovery. In addition, dispositive motions are often unresolved as the trial date approaches, causing rescheduling of trial dates.

4. Discovery practices cause undue cost and delay in some situations. Not only is discovery not stayed during the pendency of dispositive motions, but there is also no staging of discovery for any particular purposes, such as limiting discovery to the that which is needed to engage in settlement negotiations.

5. There is no formal system for exploring settlement early in the life of a case. Many cases settle late in the proceedings, and at least some could have settled earlier in the case. This prolonged life span of cases results in unnecessary expense.

6. Cases are rarely tried on the dates when they are set. Trial dates initially scheduled are unrealistic and therefore the Court's trial calendar is unreliable. Cases are scheduled on the trial docket before it is determined that it is necessary to have trials and before it is known how the cases will develop legally and factually. Last minute settlements, unresolved dispositive motions, and the desire to avoid unnecessary trial preparation of cases on the trailer docket all result in trials being continued multiple times. Resetting trial dates causes unnecessary delay and undue cost in duplication of trial preparation.

#### VI. EXAMINATION OF THE EXTENT TO WHICH COSTS AND DELAYS COULD BE REDUCED BY A BETTER ASSESSMENT OF THE IMPACT OF NEW LEGISLATION

Based on an assessment of the filing trends, it does not appear that legislative actions relating to civil litigation have substantially affected the civil docket in this District. On the other hand, the Sentencing Guidelines, coupled with other criminal legislation over the last seven years,<sup>18</sup> have had a dramatic impact on the criminal docket and a consequential effect on the civil docket. Although not generally perceived by either the bar or the bench, the time spent in Court on criminal matters has significantly increased, with a concomitant decrease in the time spent on civil matters.

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<sup>18</sup> See Appendix D.

As crimes continue to be federalized and prosecutorial policies become more rigid, the impact on this District could inevitably cause the criminal docket, in effect, to squeeze out the civil docket. Congress should give serious attention to the effect of continued federalization on the cost and delay associated with civil cases in federal court.

## VII. BASIS FOR RECOMMENDATION OF THE ADVISORY GROUP

Having identified the principal causes of cost and delay in this District, the Advisory Group recommends that the Court develop a cost and delay reduction plan that will address these issues. Rather than borrowing from an already established plan or adopting any sort of model plan, the Advisory Group recommends that the Court take an innovative approach to case management and civil trial settings. When coupled with a formalized mechanism for invoking alternative disputes resolution programs, the Advisory Group believes its recommendations are specifically tailored to the needs of this District and are designed to address the identified causes of cost and delay.

## VIII. RECOMMENDATIONS FOR REDUCING COST AND DELAY

### A. Customized Case Management

#### 1. Introduction

To address the problems of cost and delay resulting from the current Local Rule 11 scheduling practice, the Advisory Group recommends the adoption of a system of customized case management, which involves the Court directly in working with counsel to assess what proceedings are necessary to dispose of the individual case, to schedule those proceedings in an orderly and efficient manner, and to monitor compliance with that schedule. While management of cases remains primarily and ultimately the responsibility of the lawyers acting in the best interests of their clients, bringing to bear the attention and resources of the Court in planning, implementing, and supervising the progress of each case will facilitate the just, speedy, and less costly disposition of civil actions filed in this District.

As its name implies, customized case management is management intentionally customized to the needs of each particular case. For example, with customized case management, there should not be unbridled discovery; rather, discovery should be intentionally harnessed and focused on the actual discovery needs of the case or distinct phases of the case. Likewise, the system involves an early and ongoing assessment of how to resolve the case. If the case should be resolved by dispositive motion, the

schedule will provide for the efficient and expeditious resolution of the dispositive legal issue(s). If the case should be resolved by settlement, the schedule will direct the parties to utilize settlement techniques at the appropriate time in the case. If the case will be resolved by trial, it will be set for trial at the time when all pretrial issues have been resolved and it is determined that settlement is unlikely; the trial date will then be set quickly and firmly.

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Through the use of customized case management, the Court, counsel, and litigants should be able to avoid the unnecessary cost and delay of engaging in discovery that exceeds the direct needs of a case; of missing early opportunities to reach a settlement; of clogging the Court's trial calendar with trial dates for cases that are not likely to need trials; and of failing to obtain timely and expeditious resolution of dispositive motions.

Customized case management is not the same as differentiated case management (DCM), referred to in the Civil Justice Reform Act, 28 U.S.C. § 473(a)(1). Under a DCM system, each case is assigned a separate "track" depending upon such factors as the type of case, number of parties, etc. The time within which a case will be set for trial, the amount and extent of discovery, etc., are pre-determined according to the "track" to which a case is assigned. The Advisory Group considered DCM as a possible solution, but recommends against it in favor of customized case management. The Advisory Group does not believe that a system of pigeon-holing cases into particular tracks for discovery, trial scheduling, and other matters simply because of pre-conceived notions about artificial distinctions will offer the benefits of customized case management or the likelihood of correcting the causes of cost and delay that exist in this District.

On the other hand, the Advisory Group does not recommend abandoning the currently utilized procedures that entail forms of tracking in Title VII cases, prisoner cases, Social Security cases, and Bankruptcy appeals. In fact, the Advisory Group recommends that the tracking procedures currently used in those specialized cases be maintained, as they have proved successful in expediting the handling of those cases.

## 2. Specific Recommendations

### a. Applicability

The Advisory Group recommends that the customized case management system eventually be applicable to every civil action, except those generally exempted from current Local Rule 11. As of the effective date of the Plan, the Court should apply it to every non-exempt case filed thereafter. This process should allow the Court to implement the new case management system in a gradual manner. The Court may want to apply the system to previously pending cases, but will obviously need to exercise caution in order to avoid being overwhelmed by case management activities that could

themselves create a backlog and defeat the purpose of these recommendations and the Civil Justice Reform Act. The Advisory Group believes that all non-exempt civil cases will benefit from the reductions in unnecessary cost and delay due to the customized case management system, but recognizes that the Court may determine that those benefits may not be attained in some cases and exempt those. By the same token, the Court may decide to extend customized case management to otherwise exempt cases in which such benefits may be achieved.

The Advisory Group recommends that the customized case management plan be mandatory in every non-exempt case. That is, parties should not be permitted to opt out of case management except with Court approval.

b. Designation of Case Managers

The customized case management proposal thus requires that each non-exempt civil case be assigned to a judicial officer, called the "case manager," with responsibility and authority for case management. The Advisory Group believes that the case manager must be a judicial officer, although it may be either the Article III Judge or a Magistrate Judge. No other Court personnel would have the clout or credibility necessary to set and enforce deadlines or otherwise facilitate the progress of a case. Some Advisory Group members strongly advocated that, to the extent possible, the Magistrate Judges should be designated as case managers, and the Advisory Group as a whole believes that there may be advantages in doing so. Particularly, that division of responsibilities would increase the time available to Article III Judges to decide cases either by conducting trials or ruling on dispositive motions, functions which in most cases can be performed only by the Article III Judges. On the other hand, delegating all case management responsibilities to the Magistrate Judges requires that they have sufficient time to devote to intensive case management. Substantial additional time may result if the Court adopts the Advisory Group's recommendation to discontinue the practice of referring dispositive motions to the Magistrate Judges for Reports and Recommendations.<sup>19</sup>

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<sup>19</sup> That may not be enough. If all cases subject to customized case management were referred to the two Magistrate Judges as case managers, that assignment would, in and of itself, require a substantial time investment on the part of the Magistrate Judges. The Advisory Group estimates that approximately 800 cases filed each year will be subject to customized case management. Each Magistrate Judge would have 400 new cases to manage annually, requiring them to schedule two case management conferences each day just to hold all initial case management conferences. The Advisory Group, therefore, recommends that, once customized case management is operative, the District renew its request for an additional Magistrate Judge. Further, if all cases in the District are referred to Magistrate Judges for case management, the District would probably require two additional Magistrate Judges.

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To the extent that Article III Senior Judges are available in the division in which the case is filed, the Advisory Group recommends that they be considered as case managers if they consent to such designations.

The Advisory Group recommends that selection of the case manager should be at the option of the Article III Judge to whom the case is assigned. He may decide to delegate all cases to the Magistrate Judge assigned to the case for case management, to retain case management responsibility in all cases for himself, or to select the case manager on a case-by-case basis.

c. Role of Case Manager

As stated in the Introduction, the role of the case manager, as most broadly conceived, is to be active in the management of the pre-trial phase of a case. Keeping in mind that counsel retained by the parties have the ultimate responsibility for managing cases in the best interests of their clients, the case manager becomes involved by assuring that case management occurs, and that it is directed at the just, speedy, and less costly disposition of each case. Thus, the case manager helps counsel plan the schedule of the case, making certain that settlement possibilities are considered early, that dispositive issues are identified, raised, and resolved in a timely fashion, and that discovery is tailored to fit the needs of the particular case or phases of the case. Thereafter, the case manager remains involved by monitoring and enforcing the schedule of the case, and evaluating with counsel the need to modify any part of the schedule. Finally, when it appears a trial will be necessary to resolve the case, the case manager facilitates the scheduling of a quick and firm trial date.

The Advisory Group considered at length the attributes of the role of the case manager. Although initially some conceived of a mediator who, through skillful negotiations, would encourage the parties to agree among themselves, the final consensus of the Advisory Group was that the case manager would realistically have to be a judicial officer who, if necessary, "gavels it down," i.e., makes decisions on matters of scheduling, discovery, and other pretrial matters, with or without the consent of the parties.

As far as specifics, the Advisory Group recommends that the case manager be responsible for assuring management of the following matters, among others:

(1) Supervising all pre-trial activities by scheduling an initial case management conference and any other case management conferences, as appropriate to monitor the progress of the case;

(2) Developing realistic, customized deadlines for all pre-trial activities, including deadlines for discovery, motions, and responses thereto;

(3) The timing, sequence and extent of discovery, including the timing and extent of disclosure of expert opinions;

(4) Determining what limitations should be placed on discovery in the case and how discovery should be staged;

(5) Defining and refining issues, and eliminating duplicative and frivolous claims;

(6) Assessing whether the case should be resolved by settlement, dispositive motion, or trial;

(7) Resolving pretrial disputes on non-dispositive matters, including those related to scheduling, discovery, and other matters within the scope of 28 U.S.C. § 636(a);

(8) Considering what legal issues should be resolved by motions and determining the timing for filing of dispositive motions;

(9) Determining whether issues arising under Rules 13-15 and Rules 17-21 of the Federal Rules of Civil Procedure will have to be resolved by motions, and, if so, determining deadlines for filing and responding to motions under these Rules;

(10) Ascertaining when and what settlement techniques should be considered;

(11) Facilitating discussion of whether the parties will consider consenting to proceed before the Magistrate Judge for any part or all of the proceedings;

(12) Determining when the case is ready for trial, i.e., that it will not settle, that there are no dispositive matters pending and that it should be placed on the trial calendar for an early and firm trial date; and

(13) If the case manager is not the Article III Judge assigned to the case, coordinating with the Article III Judge assigned to the case, or appropriate members of the Judge's staff, the scheduling of dispositive motion hearing dates, trial dates, and all other matters requiring the involvement of the Article III Judge.

d. Case Management Procedures

(1) Initial Case Management Conference

All non-exempt cases should have at least one case management conference scheduled early in the case. It is recommended that the initial case management conference be scheduled within 45 days of the filing of the complaint. In concluding that the initial case management conference should be held at that point, the Advisory Group considered the impact of the proposed amendment to Rule 4, which would allow a defendant 60 days to answer (90 days if the defendant is outside of the United States) if he or she waives service. However, the Advisory Group determined that, because early Court involvement is essential to customized case management, the initial case management conference should not be delayed until answers are filed if defendants take advantage of the maximum period of time to file answers under the revised Rule 4. In some instances, the initial case management conference may occur prior to the filing of answers of all defendants and, under appropriate circumstances, could even be scheduled prior to service on any defendants. The timing of the initial case management conference requires a compromise between the interest of holding it very early in the case so as not to become an agent of undue delay itself and the interest of allowing parties and their counsel sufficient time to study, investigate, and analyze their cases to a substantial degree. The Advisory Group sided with the need to have the case manager become involved in planning the progress of the case at the earliest feasible time to reduce delays in "getting things started." The flexibility inherent in the customized case management system should allow the case manager sufficient leeway to deal with cases in which a different time frame for the initial conference is appropriate. In any event, any party may move the case manager to hold the initial case management conference earlier or later than originally scheduled.

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Upon the filing of a complaint or a notice of removal, the Clerk should provide to the filing party a notice of the scheduled date for the initial case management conference, with instructions that the filing party must serve the notice along with the summons and complaint. It is recommended that each judicial officer provide to the Clerk a calendar of dates and times on which that judicial officer will be available to hold case management conferences so that the intake clerk can insert a date on the notice of the initial case management conference. If the District Judge has chosen to determine the case manager on a case-by-case basis, the initial case management conference should be scheduled before the District Judge, who may refer the case to a Magistrate Judge for case management after the initial case management conference. The Advisory Group considered other alternatives for the effective scheduling and service of notice of the initial case management conference when a District Judge has chosen to determine the case manager on a case-by-case basis, including delaying issuance of the summons until after such designation had been made. However, the logistical difficulties of such

alternatives appear substantial. Although the Advisory Group wanted to preserve the discretion of the District Judge to designate the case manager on a case-by-case basis, delaying issuance and service of the notice of the initial case management conference until after that designation is made would potentially result in unnecessary cost and delay that the Advisory Group believes should be avoided.

The matters to be discussed at the initial case management conference include those appropriate to the role of the case manager as set forth in Section 2(c) above. Following the conference, the case manager should enter an order that will govern the progress of the case. Prior to the initial case management conference, counsel should, at the initiative of the plaintiff's counsel, confer (in person, by telephone or by any other means) about the matters anticipated for discussion at the conference and should prepare a proposed case management plan for submission to the case manager at the initial case management conference. This proposed case management plan is not intended to be submitted for automatic approval by the case manager but is designed to provide the foundation for discussion, case assessment, and case management by and with the case manager. It is recognized that it may not always be practical for counsel to confer with adversary counsel, much less to prepare a case management plan, since all parties may not have been served in time to allow meaningful consideration and discussion.

## (2) Case Management Order

The Advisory Group recommends that a case management order be entered after the initial case management conference covering the areas listed in Section 2(c) above and any other appropriate matters. The case management order will set forth all deadlines necessary for the progress of the case. It will also include a discovery plan. The Advisory Group contemplates that the case manager will be active in assessing the true discovery needs of a case, and in devising ways to make discovery efforts efficient and cost effective. The order will schedule a time or times for the parties to engage in settlement conferences or other alternative dispute resolution techniques. The order will also specify the time frames and/or deadlines for the filing of dispositive motions and any stays of discovery occasioned by such motions. In addition, the case management order should provide for periodic conferences to monitor the progress of the case at least every six months, and should provide for a final conference to set the case for trial if necessary.

The parties should not be allowed to stipulate amendments to the case management order without the approval of the case manager. On the other hand, the case manager should liberally entertain motions to amend the case management order. If all parties agree to the amendment, the case manager, at his discretion, probably should grant the motion to amend without a conference as long as the amendment will not significantly increase cost and delay in the case. If all parties do not agree to the proposed

amendment to the case management order or if the case manager otherwise believes it appropriate, the case manager should convene a case management conference or hearing, which may be held by telephone or other available teleconferencing method.

### (3) Subsequent Case Management Conferences

Subsequent case management conferences should be scheduled in the case management order, depending upon and tailored to the needs and complexity of the case. The Advisory Group assumes that, in most cases, there will be more than one case management conference prior to the final case management conference. In protracted cases, case management conferences may be warranted on a regular, periodic basis.

Additional case management conferences may be scheduled even if they are not provided for in the case management order. Circumstances under which a subsequent case management conference may be warranted include the following:

(a) The initial case management conference was held before all parties had entered appearances in the case and/or before the parties were sufficiently familiar with the case to engage in comprehensive discussion. In that event, the case manager should schedule a second case management conference as soon as practical to determine any unresolved issues.

(b) An amendment to the case management order is sought. See Section 2(D)(2) above.

(c) The case has been pending for over six months since the last case management conference.

(d) A dispositive motion is filed that is not provided for in the case management order.

(e) Scheduling of briefing and oral argument on a motion, including a dispositive motion, if necessary.

### (4) Final Case Management Conference

In keeping with the Advisory Group's recommendation that cases not be set on the Court's trial calendar until it is clear that the case is unlikely to be resolved without a trial, customized case management should include a final case management conference to be held after completion of all stages of the case to set the case for trial. By this time, discovery should have been completed, settlement efforts exhausted, and dispositive issues resolved. The Advisory Group believes it critical that cases not receive a trial

setting until this stage of the proceedings in order to minimize, if not eliminate, the phantom trial docket that has resulted from assigning trial dates to all cases shortly after they are filed. Only in this way can firm trial dates be re-established in this District. At the same time, however, the Advisory Group wants the trial date to be early, at least relative to the time when it is scheduled. Given the demands on counsel's calendars, it will be necessary for case managers to be realistic in setting trial dates and perhaps to advise counsel of a targeted trial month or week earlier in the case management process than the final case management conference.

e. Discovery

(1) Generally

Although the data developed by the Advisory Group did not directly demonstrate any widespread abuse of discovery in this District, it is self-evident that, whenever more discovery is undertaken than is actually necessary for the needs of the case, there is undue cost and delay. Accordingly, the Advisory Group recommends that the customized case management system be particularly attuned to the need to customize discovery to meet the actual requirements of a case, and no more. Discovery should be staged according to the needs of each stage of the case (settlement, dispositive motions, and trial). In other words, if the case manager determines that the discovery necessary for the parties' evaluation of the case for settlement is less than that necessary for full trial preparation, discovery should be so limited and a settlement conference conducted before additional discovery is allowed. Similarly, once it is apparent that a dispositive issue exists and that a motion thereon will be filed, the case manager should determine if discovery can be limited to that issue and, if so, only discovery on that issue should be permitted before a ruling on the dispositive motion. Apart from these limitations on the scope and timing of discovery, there should be no pre-conceived or arbitrary discovery limits, but rather any limitations on the number of interrogatories, document requests, or depositions should be based on the particular needs of each case.

(2) Proposed Amendments to the Federal Rules of Civil Procedure

In the event the proposed amendments to the discovery provisions of Federal Rules of Civil Procedure pass Congress in their present form, the Advisory Group recommends that the Court opt out of the mandatory disclosure requirements to the full extent permitted by the proposed rules themselves, by the Civil Justice Reform Act, or by any other authority, both for those cases covered under and exempted from the customized case management plan. The Advisory Group anticipates that ancillary litigation will be spawned by the proposed rules, such as the definition of what discovery must be disclosed and the interpretation of other language in the amendments. Such ancillary

litigation will increase the cost of and further delay the resolution of cases--the very evil the Civil Justice Reform Act was designed to prevent. In addition, many Advisory Group members support the position that mandatory disclosure is antithetical to the adversary system and the attorney-client relationship. It would be ironic for discovery reform to transform a system faulted for allowing "fishing expeditions" into a system in which the fish jump into the boat or are delivered to the adversary in a dragnet. As to those cases exempted from customized case management, the Advisory Group believes the requirements of the proposed amended rules will result in increased cost and delay.

The Advisory Group specifically considered including in the listing of the case management responsibilities of the case manager (see Section 2(c) above) the directing of disclosure of persons with knowledge of discoverable matters, disclosure of requested documents, and disclosure of experts. However, the Advisory Group decided to delete that provision for the same reasons that the Advisory Group recommends that the Court opt out of the mandatory disclosure requirements of the proposed discovery rules.

### (3) Stays of Discovery

The Advisory Group devoted considerable attention to whether discovery should be stayed during the pendency of dispositive motions. Currently, under Local Rule 9, discovery is not automatically stayed when a dispositive motion is filed, and the Rule is widely interpreted to call for stay motions to be viewed in the light most favorable to the non-moving party. The Advisory Group specifically recommends a reversal of that view so that ordinarily discovery will be stayed pending a ruling on a dispositive motion, except for discovery necessary to respond to the issues raised in the motion. The Advisory Group believes this to be the best way to capture the potential cost savings resulting from raising dispositive issues before the close of discovery. The Advisory Group, however, draws a distinction between dispositive motions provided for in the case management order, and those that are not. Thus, it is recommended that, during the pendency of any dispositive motion filed in accordance with the case management order, discovery should be automatically stayed. Ordinarily, this stay will itself be provided in the case management order. A party seeking to engage in discovery during the pendency of a dispositive motion, including discovery necessary for the resolution of the motion, should have the right to file a motion to lift the stay of discovery. It is recommended that, except for discovery necessary to the resolution of the dispositive motion, the Court should lift the automatic stay only under special circumstances.

By contrast, if a dispositive motion is filed that is not provided for in the case management order, there should be no automatic stay of discovery. Any party may file a motion to request that the case manager stay discovery during part or all of the pendency of such a motion. Even though the motion is filed outside the case

management order, discovery should be stayed when the case manager finds that there is a substantial likelihood that a stay of discovery will avoid unnecessary cost.

(4) Discovery Prior to Initial Case Management Conference

Although discovery requests can be made prior to the initial case management conference, in order to prevent excessive discovery before the involvement of the case manager, responses to discovery requests should not be required prior to the initial case management conference. At that time the case manager can determine what discovery should be provided, the extent to which it should be provided, and the timetable and deadlines for the phases of discovery. A party seeking discovery responses prior to the initial case management conference should be allowed to file a motion requesting such relief. The case manager should not grant the motion absent compelling circumstances, however, in order to maintain the integrity and efficacy of the case management process.

The Advisory Group acknowledges that plaintiffs in personal injury cases may need to conduct limited discovery to determine the identities of other potentially responsible parties prior to the normal scheduling of the initial case management conference because of the Tennessee Supreme Court decision of *McIntyre v. Balentine*, 833 S.W.2d 52 (Tenn. 1992). The Advisory Group believes such circumstances should be deemed compelling if a statute of limitations is about to expire with respect to such a party, and that discovery seeking the identification of such parties should ordinarily be required.

f. Dispositive Motion Practice

The Advisory Group believes the evidence is overwhelming that the practice of referring dispositive motions to Magistrate Judges for Reports and Recommendations almost always results in an increase in cost and delay in a case. Accordingly, it is strongly recommended that, regardless of whether the case manager is the Magistrate Judge, dispositive motions should not be referred to the Magistrate Judge but should be resolved in the first instance by the Article III Judge. The Advisory Group does not recommend any changes in the current practice of referring prisoner cases, Social Security cases, and Title VII cases to Magistrate Judges. The practice of referring these cases to Magistrate Judges has proven an effective means of resolving these types of cases, and the Advisory Committee contemplates that Magistrate Judges will continue to enter Reports and Recommendations in these cases.

On very rare occasions, an Article III Judge or the case manager may identify cases, particularly those that will require review of an extensive factual record to determine the existence or absence of a genuine issue of material fact, as appropriate for

referral to the Magistrate Judge for Report and Recommendation. In those cases, it may sometimes be appropriate to refer dispositive motions to the Magistrate Judge, provided that undue cost and delay do not occur as a result of such referral. At the other end of the spectrum, the Advisory Group does not believe referrals will very often be justified as a method of dealing with a backlog of cases, and recommends referrals not be made for that reason. If Magistrate Judges serve as case managers on an extensive basis, their time must be freed from the consideration of dispositive motions so that they will have the time required for their case management responsibilities.

The Advisory Group also recommends clarification and renewed, strict enforcement of Local Rule 8(b)(7), which the Advisory Group anticipates will eliminate the need for Magistrate Judge referral even in factually complex cases. The Advisory Group recommends that the Court consider re-drafting Local Rule 8(b)(7) more specifically to require that each material fact the moving party contends is undisputed be listed separately with reference to the record and/or supporting documentation and, correspondingly, to require that the non-moving party specifically respond to each listed material fact by admitting that it is undisputed or by demonstrating, with reference to the record and/or supporting documentation, that it is disputed.<sup>20</sup>

Apart from the cost and delay that has resulted from referrals to Magistrate Judges, another significant cause of cost and delay in dispositive motion practice results from delays in the filing of briefs and scheduling of oral argument. The Advisory Group recommends that unnecessary and avoidable delay be squeezed from the process as much as possible. Thus, when a dispositive motion is filed, a briefing schedule should be established leading to a proposed hearing date set within 45 days of the filing of the motion. The Court can always cancel oral argument if, after reviewing the motion, the Article III Judge believes it would not be useful. Likewise, the Court can always extend the briefing schedule or continue the hearing date for good cause shown. However, setting a schedule and adhering to it would be the best way to eliminate these often unnecessary delays. The bar is accustomed to such procedures, which are employed by state and federal appellate courts.

If the case manager is the Magistrate Judge, he should obtain a proposed hearing date from the Article III Judge when a dispositive motion is filed, and should enter a notice to the Article III Judge and the parties of the filing of the dispositive motion, a briefing schedule, and the proposed hearing date. The notice should also specify whether the dispositive motion was provided for in the case management order, whether discovery

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<sup>20</sup> See Rule 13(G) of the Local Rules of the Western District of Missouri. See also Omaha Indem. Co. v. Royal American Managers, Inc., 755 F. Supp. 1451, 1455 (W.D. Mo. 1991).

has been stayed, and whether there are any other factors that would require more particularly expedited consideration of the dispositive motion.

The parties may file dispositive motions without leave of the case manager, as long as they are filed prior to the dispositive motion deadline contained in the case management order. The Advisory Group recognizes that there may be valid reasons for filing a dispositive motion that is not provided for in the case management order. It is not always feasible or appropriate to anticipate dispositive issues or the filing of dispositive motions at the outset of a case when the initial case management conference is to be held. Even further into the case, testimony may be given which should be dispositive but which was unexpected at the time the case management order was prepared. Thus parties must be free to file dispositive motions when the needs of the case and the interests of the clients make it appropriate. The filing party should, in any event, be encouraged to move to amend the case management order (see Section 2(d)(2) above). If provision in the case management order or amended case management order is not made for the filing of a dispositive motion, it must be recognized that the filing of such motion will have consequences for the progression of the case, including the stay of discovery, that will require case management. Thus, if a case management order does not provide for the filing of a dispositive motion that is nonetheless filed, the case manager may, at his discretion, schedule a case management conference after the dispositive motion is filed.

The Advisory Group recommends that there be a formalized method of accounting for and reporting pending dispositive motions on a monthly basis. Specifically, the Advisory Group recommends that the Clerk prepare a listing of the dispositive motions pending before each Article III Judge on a monthly basis for circulation within the Court. Such list should reflect dispositive motions under advisement over 30 days, over 60 days, and over 90 days. Under this reporting system, a motion should be considered pending as soon as the last response or brief is filed. This reporting requirement is of particular importance to notify the Court of the pendency of the motions during which time discovery is stayed.

g. Trial Settings

The Advisory Group strongly recommends that a trial date should not be set for any case until it is known that a trial will most likely be needed, and then it should be set quickly and firmly at that point. The Advisory Group believes that setting a case "firmly" is probably more important than setting it "quickly." In keeping with the flexibility of customized case management, the Advisory Group specifically refrains from suggesting hard-and-fast time frames within which cases should be set for trial after the determination is made that they should be set for trial. However, once discovery is complete, dispositive issues are resolved and the case manager determines that the

chances of settlement are minimal, the case should be set for trial as soon as practical. In addition, the case manager should begin targeting time frames for the trial date earlier in the case management process in order to facilitate the early setting of the trial date.

The Advisory Group considered at length the efficacy of scheduling a trial date early in the case, particularly as a means of forcing settlement or preparation for trial. It was decided that a series of deadlines set forth in the case management order and under the supervision of the case manager is preferable to, and more effective than, the early-set trial date as the means of "moving cases." The current system of setting trial dates at the outset of the case results in scheduling case deadlines "in reverse" because the parties determine a trial date and then work backwards from that date to set deadlines for discovery and dispositive motion filing. This results in a "phantom" trial calendar full of cases that, when the date for trial arrives, must be adjusted because the parties are not ready and/or because dispositive motions are pending. By contrast, customized case management uses a system of "forward scheduling." The Advisory Group believes that it is more in keeping with human nature to deal with concrete, realistic, short-term deadlines, and that the system of scheduling trial dates at the beginning of the case when the parties cannot foresee events in or the progression of the case can be improved upon in determining how best to move cases effectively.

If the Magistrate Judge serves as the case manager, the Magistrate Judge and his courtroom deputy and/or staff will be required to work closely with the Article III Judge and his courtroom deputy in scheduling trial dates. The courtroom deputies for the Article III Judges should also be responsible for calendaring the civil and criminal week proceedings and for scheduling cases on short notice when cases previously calendared are cancelled. The role of the courtroom deputy is central to the success of the Advisory Group's proposals for moving cases to resolution. When the courtroom deputies for the case manager and Article III Judge must work together to schedule and facilitate the progress of cases, their working relationship is all the more crucial.

## B. Alternative Dispute Resolution

### 1. Introduction

It is widely believed that approximately 95 per cent of all civil cases filed nationwide are resolved prior to trial, typically by settlement. There is no reason to think this is not also true in this District. Certainly, a significant number of cases settle on the eve of trial, after the expenditure of much time and money that could have been avoided if the settlement had occurred at an earlier stage of the proceedings. Thus, the absence of any formalized system to attempt to resolve cases by mutual consent early in the proceedings is itself a cause of cost and delay.

The Advisory Group found that, except for judicially-conducted settlement conferences, alternative dispute resolution (ADR) techniques are seldom if ever used in this District. Alternative dispute resolution techniques are used elsewhere to aid in the resolution of cases by mutual consent in order to avoid the expense of trial and delay in adjudication. There is considerable evidence that, through the proper and early use of ADR techniques, settlements can be facilitated early in the proceedings, thereby reducing otherwise unnecessary time and expense of protracted pretrial proceedings, including discovery and other pretrial preparation. However, the Local Rules in this District lack any provision for ADR. There are no methods in place for referring cases to ADR, and there is little encouragement by the Court to induce parties to consider using ADR. This is not surprising since ADR resources are barely beyond their nascent stages in this region of the country.

Although this District has previously utilized the ADR technique of summary jury trials, it was never used extensively and has not been used in the recent past. Neither the Court nor the bar in this District has embraced the summary jury trial as an effective technique. In contrast, settlement conferences, conducted by both Magistrate Judges and District Judges, have garnered enthusiastic support from both the Court and the bar, and have been effective in bringing the parties together and facilitating realistic settlement discussions. This form of alternative dispute resolution is an efficient use of the judicial officers in this District. The limitation of the current practice of referring cases to settlement conferences is that there is no formal mechanism by which a party may request a settlement conference nor is there a formalized system by which the Court reviews a case to determine the propriety of referral for a settlement conference.<sup>21</sup> Often, settlement conferences are conducted as a result of an informal request by one or more parties or when the Court hears another matter in the case and decides that the case should be referred for a settlement conference.

To address these issues, the Advisory Group recommends that the Court experiment with the use of ADR techniques, such as mediation and early neutral evaluation, watch for opportunities to refer appropriate cases to ADR resources outside the courthouse as those programs become established, and provide judicially-conducted settlement conferences on a regular and formalized basis.

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<sup>21</sup> Rule 16 of the Federal Rules of Civil Procedure authorizes the Court to schedule pretrial conferences for, *inter alia*, facilitating settlement. Although not specifically provided in the rule, a party may file a motion under Rule 16 to request that a settlement conference be scheduled.

## 2. Specific Recommendations

### a. Reference to Alternative Dispute Resolution Programs

#### (1) Alternative Dispute Resolution Programs Provided by the Court

The Advisory Group recommends that the case manager (or, in cases not subject to customized case management, that the District Judge or Magistrate Judge assigned to the case) regularly exercise his authority to refer cases for any method of alternative dispute resolution provided by the Court, including settlement conferences, with or without the consent of the parties. The majority of the Advisory Group believes that judicial officers have this power in all cases when the ADR program or settlement conference is provided at the Court's expense such that the parties do not have to pay the fees or expenses of the person presiding or auxiliary staff.

There are, however, cases in which mandatory ADR may be inappropriate, such as those seeking injunctive relief to vindicate constitutional violations. Likewise, there are other cases that simply cannot be resolved without a trial, in which mandatory participation in ADR would be futile and actually increase cost and delay. Finally, the Advisory Group has been made aware of problems of obtaining meaningful participation in such procedures by governmental entities due to the level at which authority to settle is vested. In rare cases, this may also be an impediment to non-governmental parties as well. The Advisory Group is confident, however, that the Court will consider the relative advantages of mandatory referral on a case-by-case basis and will not direct governmental or other non-governmental parties to attend ADR programs without their consent when it is unnecessary, overly burdensome, or inappropriate; when it is impractical to identify a person(s) with the requisite settlement authority; and when it may increase time and expense.

The Advisory Group is cognizant of the recent decision of the United States Court of Appeals for the Sixth Circuit in In re: NLO, Inc., No. 93-3065 (September 17, 1993), in which the Court held that a District Court cannot compel unwilling parties to participate in summary jury trials. The Advisory Group did not believe it appropriate to determine the extent to which this decision affects the Court's power to compel the attendance of unwilling parties at other ADR programs, and in particular at settlement conferences, or to determine whether a local rule that permits the Court to compel unwilling parties to attend ADR programs, promulgated in accordance with the Civil Justice Reform Act, would contravene the Sixth Circuit's decision.

At present, this District does not provide or utilize ADR techniques other than settlement conferences and less formal settlement discussions in the context of case

management. However, in recognition of the potential developments in the area of alternative dispute resolution, the Advisory Group recommends flexibility in referrals to ADR programs provided by the Court, while being mindful of the restrictions of In re: NLO, Inc., placed on Court-ordered, non-consensual participation in ADR programs.

(2) Alternative Dispute Programs Not Provided by the Court

The Advisory Group recommends that the case manager (or, in cases not subject to customized case management, that the District Judge or Magistrate Judge assigned to the case) refer cases to alternative dispute resolution programs not provided at the expense of the Court only with the consent of the parties. The Court and the parties should consider available methods of dispute resolution that are offered outside of the courthouse. However, the Advisory Group does not believe that the Court should order that the parties participate in any of these programs without their consent because of the cost involved.

b. Creation of Alternative Dispute Resolution Committee

The Advisory Group further recommends that the Court appoint an Alternative Dispute Resolution Committee to follow developments in the ADR field and to consider potential ways to implement ADR techniques and programs in this District. Alternative dispute resolution is a fluid and emerging area of the law, with new and refined dispute resolution procedures being developed throughout the nation on an on-going basis. Such a committee, composed of a District Judge, a Magistrate Judge, a representative of the Clerk's Office, and 2-3 lawyers, would help keep the Court abreast of potentially helpful alternative dispute resolution developments both within the country and within the District. This ADR Committee could also serve as a resource to the Court in its future assessment of its docket and litigation management practices within the District.

The Tennessee Supreme Court has appointed an ADR Commission, whose recommendations may be adopted in the near future for use in the Tennessee state court system. Rather than making more specific ADR recommendations for the consideration of the District Court at this time, the Advisory Group believes that the Court should await the recommendations of the Tennessee ADR Commission and the adoption of any ADR practices by the Tennessee courts. This approach will avoid duplication of effort and the development of competing and inconsistent ADR systems. Indeed, it is the hope of the Advisory Group that the Court will ultimately be able to incorporate for its own use the system to be developed by the Tennessee Supreme Court.

c. Judicially-Conducted Settlement Conferences

The Advisory Group strongly recommends the adoption of formal procedures for referring cases for settlement conferences and for conducting those conferences. These procedures should be patterned after the present informal process, which has received wide acclaim for its achievements in attaining settlements even in intractable litigation. As with other ADR techniques, however, the Court should be judicious in considering circumstances in which settlement conferences are highly unlikely to be productive, so as not to increase cost and delay. The propriety of a settlement conference should routinely be discussed by the parties and the case manager in the case management conferences conducted in cases subject to customized case management, but settlement conferences should also be available for any other cases filed in this District.

The Advisory Group recommends that settlement conferences be conducted by a District Judge or Magistrate Judge other than the case manager, if any, and other than the Judge to whom the case is assigned for trial. Settlement conferences are believed to be more effective when the case manager or trial Judge is not involved. Typically, counsel and their clients are more candid in their assessment of the case, and less likely to engage in counter-productive posturing, when a neutral party presides.

As a general matter, the Advisory Group recommends that parties or their representatives with settlement authority be required to attend a settlement conference or be available by telephone. The Advisory Group recognizes that, when parties are governmental entities, it may be difficult or impossible for such parties to send representatives with full settlement authority. In addition, there may be other, non-governmental parties for whom it would be logistically difficult or impossible to send representatives with full settlement authority. The proposed Local Rule is designed to deal with these circumstances.

The Advisory Group recommends that the procedure for filing party statements prior to the settlement conference should essentially track the existing practice in this District. Thus, each party should deliver under seal to the courtroom deputy for the Settlement Judge an ex parte settlement conference statement, which should contain a candid assessment of the strengths and weaknesses of both sides of the case, an appraisal of the issue of liability, an assessment of the economic cost of proceeding to trial, and a statement of the settlement authority extended by the client.

In order to encourage meaningful participation of the parties and their counsel, and to promote the effectiveness of the conference, the Advisory Group recommends the adoption of a broad confidentiality provision preventing an opposing party from using the contents of the discussions or any statements made or information provided to the Court and/or to any other party or counsel during a settlement conference for any purpose

outside of the settlement conference. The Advisory Group intends the confidentiality protection to be broader than that provided by Rules 408 and 409 of the Federal Rules of Evidence.

### C. Scheduling Civil Trials

#### 1. Introduction

One of the most striking aspects of the Court's current civil docket is that civil cases are rarely tried when set. This occurs due to a variety of reasons. Without active case management, cases frequently have not been adequately prepared for trial, or undecided dispositive motions are pending when the trial date arrives. Scheduling the trial at the outset of a case results in the selection of an unrealistic date that cannot be met. Scheduling multiple cases on the same date frequently invites parties on the "trailer docket" to request continuances as the date approaches so that unnecessary trial preparation and expenses may be avoided.

Many of these practices will be changed through the adoption of a customized case management system designed to winnow the civil docket to those relatively few cases that actually must be tried, and to set only those cases on the trial calendar. To effectuate that essential feature of customized case management, it is necessary to adopt a calendaring plan that will permit cases to be scheduled and tried on firm trial dates. This brings into focus the other major factor contributing to the infirmity of civil trial dates: the expansion of the criminal caseload coupled with the priority accorded criminal cases due to "speedy trial" considerations.

A review of the District Judges' trial calendar provides strong evidence of the fact that civil trial dates are frequently continued because of the need to try a criminal case instead. See Exhibit 11 to Appendix C. The effect is apparent from an analysis of the Court's workload in criminal and civil cases. In particular, statistics compiled from the period 1985-1992 illustrate that the Court's in-courtroom workload has gradually shifted from predominately civil matters to an approximately equal distribution between civil and criminal (measured in terms of hours in court). Thus, in 1985, the Court's three full-time Article III judges held 17 criminal trials averaging 19.2 hours, and 58 civil trials averaging 16.4 hours; in 1991, the same three Judges presided over 36 criminal trials averaging 16.2 hours, and only 30 civil trials averaging 16.0 hours. In April of 1992, Judge Echols joined the Court; altogether in 1992, there were 32 criminal trials averaging 20.0 hours, and 46 civil trials<sup>22</sup> averaging 14.7 hours. All indications are that the

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<sup>22</sup> The Advisory Group believes that Judge Echols' start-up nine-month trial calendar for 1992, although a testament to the Judge's energy, was disproportionately weighted with civil cases ready for trial that were transferred from other Judges.

criminal caseload will only increase in the future. Bearing these statistics in mind, the Advisory Group has developed a calendaring proposal that would adjust for the increased criminal work load, allow for a predictable number of civil trials, and provide for firm civil trial dates.

The Advisory Group's recommended calendaring proposal provides that each of the four active Article III Judges designate one week per month as a "civil trial week." During these designated weeks, civil cases that have completed the customized case management process and require trials should be scheduled with firm trial dates, usually beginning on Mondays, uninterrupted by criminal trials or by other criminal or civil non-trial matters. To maximize efficient utilization of jurors, the Judges should coordinate their designations to have two pairs of such weeks each month.

The Advisory Group considered other calendaring methods that might enhance the firm setting of civil trials. Included among those proposals rejected by the Advisory Group were a "master trial calendar" system under which cases would be randomly assigned to a trial judge within a "pool" of the available district judges. The Advisory Group concluded that under such an approach the parties would lose the considerable benefit of knowing at the outset of litigation the judge who ultimately will be making rulings on important, and perhaps dispositive, issues both before and during trial. Such knowledge affords the parties some predictability on which they may base their settlement positions.

Also considered and rejected was a system which would identify one or more judges, whether on a fixed or rotating basis, as a so-called "criminal judge" or "civil judge." The Advisory Group felt that the advantages of generalization in the judiciary, and the disadvantages of specialization, outweigh any countervailing advantages of efficiency to be gained by assigning any Article III judge to serve such a specialized function over prolonged periods of time.

The Advisory Group also considered more temporary assignments of one or more Article III Judges to exclusive handling of exclusively criminal matters. The Advisory Group recognizes that, at some future time, special measures may be required to compensate for the increased criminal workload engendered by the advent of mandatory minimum sentences, the Sentencing Guidelines, and the increasing scope of federal criminal jurisdiction. However, for reasons related to the Advisory Group's rejection of the notion of a more permanent "criminal judge," and because the adoption of such a rotation might lead to distortions in the plea-bargaining process, the Advisory Group rejected this approach.

The Administrative Office of the United States Courts has informed the Advisory Group that, to its knowledge, no other district court has instituted a system of designating

exclusive civil trial times. Both prior to the enactment of the Civil Justice Reform Act and as a result of cost and delay reduction plans, a few courts have adopted criminal rotation schedules under which only some judges are assigned criminal cases for periods of time.<sup>23</sup> The Advisory Group for this District, however, believes that the innovative approach of scheduling definite periods of time designated exclusively for civil trials better meets the needs of this District.

The Advisory Group notes that the recommended "civil trial week" proposal is to a great extent a creature of the case management system; it will work only if cases are firmly set only when it is determined that a trial will be necessary. It is anticipated that such firm trial settings, with relatively few cases settling at the last minute, will be the result of the success of the case management system. Without such a system, the civil trial week proposal will flounder under the weight of too many cases set for trial, with too little information to justify their firm settings.

## 2. Specific Recommendations

### a. Designation of Civil Trial Weeks

The Advisory Group recommends that each active District Judge should designate one week per month as a "civil trial week." During those weeks, civil trials will be scheduled with firm trial dates and, ideally, there will be no interruption of the scheduled civil trial(s) by criminal or other matters. The Advisory Group contemplates that, in general, only one civil trial would be set during each civil trial week. In 1991 and 1992

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<sup>23</sup> For several years, the Eastern District of North Carolina has had a criminal rotation system by which two of the four active District Judges are assigned all criminal cases for seven months, at the end of which time the other two active District Judges are assigned all criminal cases for a corresponding period of time. The theory behind that plan, which initially included a four month criminal assignment that was subsequently extended to seven months, was to build in "free time" away from criminal trials for the Court to handle predominantly civil matters. The success of the plan has apparently been compromised by the fact that criminal trials continue to be scheduled during the time the judges are relieved from criminal case assignment.

As part of its cost and delay reduction plan, the Western District of Tennessee adopted a plan for rotation of criminal trials expected to last five days or less. In the Western Division, located in Memphis, three of the four active District Judges preside at criminal trials, leaving the fourth Judge free to devote time to civil matters. This system is credited with achieving a decrease in disposition time of civil cases in that District.

in this District, there were 30 and 46<sup>24</sup> civil trials, respectively. Should the 1991-1992 trend continue in the foreseeable future, there should be no more than 48 civil trials actually held in the District annually. (Note that one civil trial per month x four judges x 12 months = 48 trials.) Moreover, the average length of these trials was approximately three days. Thus, this proposal should allow ample time for civil trial scheduling within the contemplated workload of the Court as a whole.

b. Number of Civil Trials to Be Scheduled During A "Civil Week"

If a proposed civil trial's duration is anticipated to be quite short (e.g., less than 10 hours), more than one civil trial may be scheduled during the civil trial week. Such cases should not be "double-set" in the sense of stacking more than one case on a "trailer docket." Rather, these cases would be set "back-to-back," e.g., one trial set firmly to begin on Monday, and the second trial set equally firmly to begin on Wednesday or Thursday.

c. Scheduling Civil Trials Without a Firm Trial Date

There may be some civil cases which might be given a "non-firm" trial date with the consent of the parties. Such a case might be one in which no "out-of-town" attorneys, witnesses, or costly experts are expected to appear. In such a case, the parties might opt for a quicker, but non-firm, trial date by electing to be set behind a criminal case in one of the other three non-"civil trial weeks" available on the Court's calendar.

d. Need for Adjustment in Scheduling the Rest of Each Month

Setting aside one week per month as a "civil trial week" will likely require some adjustment of the Court's remaining schedule. The Advisory Group has given careful consideration to any possible interference this proposal might have on the administration of the Speedy Trial Act, 18 U.S.C. §§ 3161 et seq., and has concluded that there should be no significant impact. Nevertheless, particularly in the early stages of implementation and experimentation, a fair amount of flexibility in scheduling will be desirable if not necessary. For example, should the Court become aware that an impending criminal trial is likely to be lengthy, i.e., longer than one week, it would be advisable to avoid setting such a case in the week immediately preceding the "civil trial week." Similarly, a truly lengthy criminal case, e.g., one likely to last several weeks, may have to be set specially (or the civil trial week rescheduled before any firm civil trial dates are assigned to it).

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<sup>24</sup> Again, this includes an unusually high number of civil cases tried by Judge Echols during his first year on the bench.

e. Monday Scheduling

Most District Judges appear to utilize Mondays more or less regularly as a "motion" day for motion hearings, criminal pleas or sentencings, and other miscellaneous hearings. Under current practice, both civil and criminal trials start on Tuesdays. To make optimum use of the five-day week for firm civil trial settings, the Advisory Group recommends that in the "civil trial week" jury trials should begin on Monday.

**D. Recommendations for Local Rules**

1. The Advisory Group recommends that the Court delete current Local Rule 11 in its entirety and adopt as a substitute therefor the attached, proposed local rule on customized case management.

2. The Advisory Group recommends that the Court adopt the attached, proposed local rule on alternative dispute resolution.

3. The Advisory Group recommends that the Court amend current Local Rule 8(b)(7) to require that the party moving for summary judgment list each material fact that he or she contends is undisputed, with reference to the record and/or supporting documentation, and, correspondingly, to require that the non-moving party specifically respond to each listed material fact by admitting that it is undisputed or by demonstrating, with reference to the record and/or supporting documentation, that it is disputed. See attached, proposed language for inclusion in Local Rule 8(b)(7).

4. The Advisory Group recommends that the Court repeal current Local Rule 12(c)(6)(c). Although Rule 12(c)(6)(c) was designed for the salutary purpose of preventing last minute sandbagging through the use of surprise expert witnesses and testimony, the Advisory Group believes that this rule has become counter-productive and unnecessarily contributes to the cost of pretrial preparation. It is the hope of the Advisory Group that, through customized case management and through the use of final case management conferences, the salutary purpose of the current local rule can be achieved without the cost necessitated by compliance with the current rule.

IX. EXPLANATION OF MANNER IN WHICH THE RECOMMENDED PLAN COMPLIES WITH 28 U.S.C. § 473

A. Principles and Guidelines of Litigation Management and Cost and Delay Reduction

The Advisory Group has considered the principles and guidelines of litigation management and cost and delay reduction enumerated in 28 U.S.C. § 473(a), as follows:

**1. "Systematic, differential treatment of civil cases that tailors the level of individualized and case specific management to such criteria as case complexity, the amount of time reasonably needed to prepare the case for trial, and the judicial and other resources required and available for the preparation and disposition of the case."**

The Advisory Group fully considered and rejected the system of differentiated case management and recommends, in its stead, a plan of customized case management, tailored to the individual needs of the case as determined by a case manager rather than as determined by rigid criteria that will not necessarily accommodate individual cases.

**2. "Early and ongoing control of the pretrial process through involvement of a judicial officer in assessing and planning the progress of the case; setting early, firm trial dates . . . controlling the extent of discovery and the time of completion of discovery . . . and setting . . . deadlines for filing motions and a time framework for their disposition."**

The essence of the customized case management proposal is early and ongoing control of the pretrial process through involvement of a case manager in assessing and planning the progress of a case. From its study, the Advisory Group determined that scheduling early trial dates was ineffective and therefore chose to recommend scheduling firm trial dates when cases are, in fact, ready to be tried. Essential to the customized case management plan is the control of discovery by staging discovery to meet the phases of the case and by staying discovery under the circumstances set forth in the proposed plan. Also essential to the customized case management plan is setting deadlines for all stages of the case in case management orders. The Advisory Group has refrained from recommending firm time frames for disposition of motions, but believes that the customized case management plan provides mechanisms for early disposition and replaces practices that cause delays in dispositions.

**3. "For all cases that the court or a judicial officer determines are complex and any other appropriate cases, careful and deliberate monitoring through a discovery-case management conference or a series of such conferences at which the judicial officer explores the . . . propriety of settlement . . . ; identifies or formulates the principal issues in contention and, in appropriate cases, provides for staged resolution or bifurcation of issues . . . ; prepares a discovery schedule . . . to identify and limit the volume of discovery available to avoid unnecessary or unduly burdensome or expensive discovery, and phase discovery; and sets, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition."**

The Advisory Group recommends that the customized case management plan generally apply to the cases currently covered under the current Local Rule 11 scheduling order requirement. Coverage under the case management plan will not depend upon the complexity of the case but will be mandatory for any non-exempt case. The customized case management plan encompasses all of the above listed principles, except that it does not recommend a time framework for disposition of discovery motions.

**4. "Encouragement of cost-effective discovery through voluntary exchange of information among litigants and their attorney and through the use of cooperative discovery devices."**

Through the customized case management plan, the case manager will explore cost effective discovery and the mechanisms by which discovery is exchanged, although the Advisory Group recommends against "voluntary" exchange of the type set forth in the proposed amendment to Rule 26 of the Federal Rules of Civil Procedure.

**5. "Conservation of judicial resources by prohibiting the consideration of discovery motions unless accompanied by a certification that the moving party has made a reasonable and good faith effort to reach agreement with opposing counsel."**

The Advisory Group recommends that the Court continue to retain and enforce Local Rule 9(e)(3), which comports with the above litigation principle.

**6. "Authorization to refer appropriate cases to alternative dispute resolution programs that have been designated for use in a district court or that the court may make available."**

The recommended plan and local rule proposed by the Advisory Group fully comports with this litigation principle.

**B. Litigation Management and Cost and Delay Reduction Techniques**

**1. Requirement of joint discovery-case management plan at the initial pretrial conference.**

The recommended customized case management plan and proposed local rule require, when practical, submission of a case management plan at the initial case management conference. The Advisory Group believes that it is crucial to schedule the initial case management conference very early in the litigation. Therefore, it may not be practical for the parties to develop a case management plan prior to the initial case management conference. The case manager may, however, require subsequent formulations of joint plans by the parties if there are issues outstanding after the initial case management conference and/or if the case manager does not fully develop a case management plan after the initial conference.

**2. A requirement that each party be represented at each pretrial conference by an attorney who has the authority to bind that party.**

The Advisory Group considered this requirement and determined that such a requirement was unnecessary and superfluous and did not relate to any identified causes of cost and delay. There is no indication that counsel attending pretrial conferences do not have requisite authority from their clients and, on matters upon which counsel may not have authority, the case manager, under the customized case management plan, will resolve such issues by a case management order. On the other hand, requisite authority is an essential element of the alternative dispute resolution proposal. See #5 below.

**3. A requirement that all requests for extension of deadlines or completion of discovery or for postponement of the trial be signed by the requesting attorney and party.**

The Advisory Group considered this requirement and determined that it was unnecessary. The customized case management plan will require ongoing judicial supervision of the progression of the case, including deadlines, and will require that trials be set firmly.

#### **4. A neutral evaluation program.**

The alternative dispute resolution proposal and recommended local rule encompass non-binding, neutral evaluation programs conducted early in the litigation.

#### **5. A requirement that representatives of the parties with authority to bind them in settlement discussions be present or available by telephone during settlement conferences.**

The recommended alternative dispute resolution plan and proposed local alternative dispute resolution local rule include such a requirement.

#### **6. Other features**

Upon request by Judge Robert M. Parker,<sup>25</sup> immediate past Chair of the Committee on Court Administration and Case Management of the Judicial Conference of the United States, the Advisory Group considered the need and propriety of providing for controls on contingency fees. Judge Parker expressed concern about contingency fees ranging from between 40 and 50 percent. After thorough consideration, the Advisory Group determined that there was no evidence to believe that contingency fee arrangements were a cause of undue cost in this District. The Advisory Group believes that the proposed plan will comprehensively address the identified causes of undue cost and delay that have been identified and that it is unnecessary to provide for any changes to existing fee arrangements between attorneys and litigants in this District.

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<sup>25</sup> See Memo from Judge Robert M. Parker to all Chief Judges and Advisory Group Chairs, dated October 22, 1992.

10-25

**PROPOSED  
COST AND DELAY REDUCTION PLAN  
AND OPERATING PROCEDURES**

**Middle District of Tennessee**

**I. Customized Case Management**

**A. Goals and Purpose**

Customized case management provides mandatory, Court-supervised, case management tailored to the individual needs of each case that is subject to the plan. The goal of customized case management is to reduce cost and delay of litigation in federal District Court, as mandated by the Civil Justice Reform Act, 28 U.S.C. §§ 471, et seq., and to accomplish the objectives set forth in Rule 16(a) of the Federal Rules of Civil Procedure, specifically, to expedite the disposition of the action; to establish early and continuing control so that the case will not be protracted because of lack of management; to discourage wasteful pretrial activities; to improve the quality of the trial through more thorough preparation; and to facilitate the settlement of the case.

Management of cases is primarily and ultimately the responsibility of the lawyers acting in the best interests of their clients. Customized case management brings to bear the attention and resources of the Court in initiating case management, supervising its implementation and actively monitoring the progress of each case to assist the parties in achieving the most efficient planning, scheduling, and progression of the case.

Customized case management will take the place of the scheduling order practice under current Local Rule 11 and will require the Court to be directly involved with counsel to assess the needs of each case and to develop a case management plan that tailors discovery to the needs of the case, schedules appropriate settlement conferences and sets efficient and realistic deadlines for the progress of the case.

If the case should be resolved by dispositive motion, customized case management will provide for the efficient and expeditious resolution of the dispositive legal issue(s). If the case should be resolved by settlement, the Court will make available or recommend settlement techniques to be utilized at the appropriate time in the case. If the case will be resolved by trial, it will be set for trial at the time when all pretrial issues have been resolved and it is determined that settlement is unlikely; the trial date will then be set quickly and firmly.

B. Application of the Plan

The Customized Case Management Plan is applicable to every civil action filed after the effective date of the Cost and Delay Reduction Plan, except those generally specifically exempted by local rule. Any case filed prior to the effective date of the Cost and Delay Reduction Plan may be subjected to the Plan by specific order of the presiding Judge. On a case-by-case basis, the Court may exempt any case from the operation of the customized case management plan, or it may extend the customized case management plan to include any otherwise exempt case.

Coverage under the customized case management plan is mandatory in every non-exempt case. Although parties may move the Court to opt out of the plan, they are not permitted to opt out of the case management plan without Court approval. A case will not, however, be exempted from the customized case management plan unless it is determined that exemption will reduce the cost and delay in the case.

In contrast, the currently utilized procedures that entail forms of tracking in such specialized cases as Title VII cases, prisoner cases, Social Security cases, and Bankruptcy appeals will be retained.

C. Designation and Role of Case Manager

Unless otherwise exempted, each civil case will be assigned to a judicial officer with responsibility and authority for case management, i.e., a case manager. The active Article III Judge to whom cases are assigned will elect whether the Magistrate Judge randomly assigned to the case or the District Judge will serve as the case manager for all of the cases assigned to that District Judge or whether a Magistrate Judge will serve as the case manager on a case-by-case basis. The case manager will be responsible for assuring management of the case, including those matters listed in the local rule on customized case management.

For those cases assigned to the Magistrate Judge to serve as case manager, the District Judge will delegate responsibility for deciding scheduling matters, discovery disputes, and all substantive but non-dispositive motions within the scope of 28 U.S.C. § 636(a).

To the extent that Article III Senior Judges are available in the division in which the case is filed, they may be designated as managers if they consent to such assignments.

Senior District Judges will be responsible for their own case management on the cases covered under the customized case management plan that are assigned to them,

although, in the discretion of the Senior District Judge, any case may be assigned to a Magistrate Judge to serve as case manager on a case-by-case basis.

D. Case Management Procedures

1. Initial Case Management Conference

All cases covered under customized case management shall have at least one early status/case management conference. The first case management order will be entered by the case manager, scheduling and outlining the purposes of the first case management conference. The contents of the case management order will be tailored by the case manager to the needs and complexity of the case. The first case management conference will be scheduled within 45 days of the filing of the complaint. In some instances, the first case management conference may be scheduled before all defendants have filed answers and, under appropriate circumstances, may even be scheduled before any defendant has been served. Any party may move the Court to hold the initial case management conference earlier or later than the Court schedules it.

Upon the filing of a complaint or notice of removal, the Clerk shall provide to the filing party a notice of the scheduled date for the initial case management conference, with instructions that the filing party must serve the notice along with the summons and complaint. Each judicial officer will provide the Clerk a calendar of dates on which that judicial officer will hold initial case management conferences. If the case is assigned to a District Judge who has chosen to designate the randomly assigned Magistrate Judge as case manager for all cases assigned to that District Judge or if that District Judge has chosen to be the case manager for all such cases, the intake clerk will provide the party filing the complaint with a notice date of the initial case management conference with instructions that the filing party must serve the notice on the defendants with the summons and complaint. If the District Judge has chosen to designate a case manager on a case-by-case basis, the initial case management conference will be scheduled before the District Judge, who may refer the case to a Magistrate Judge for case management after the initial case management conference.

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Counsel shall be required to confer, at the initiative of the attorney for the plaintiff, before the initial case management conference and to prepare a proposed case management plan to be submitted at the initial case management conference for review and discussion with the case manager.

2. Case Management Order

A case management order will be entered after the initial case management conference, and will set forth all deadlines and the discovery plan for the progress of the

case. The parties are not allowed to stipulate amendments to the case management orders without the approval of the case manager. Any party may at any time file a motion to amend the case management order.

The case management order will specify the time frames and/or deadlines for the filing of dispositive motions. The parties may file dispositive motions without leave of the case manager, as long as they are filed prior to the dispositive motion deadline contained in the case management order. However, the filing of any dispositive motion, not provided for in the case management order, will have consequences for the progression of the case, including the stay of discovery, that will require case management. Thus, if the case management order does not provide for the filing of a dispositive motion that is nonetheless filed, the case manager may, at his discretion, schedule a case management conference after the dispositive motion is filed.

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### 3. Subsequent Case Management Conferences

Subsequent case management conferences will be scheduled in the case management order, depending upon and tailored to the needs and complexity of the case. In most cases, there will be more than one case management conference prior to the final case management conference. In protracted cases, case management conferences may be warranted on a regular, periodic basis.

### 4. Final Case Management Conference

A final case management conference will be held after completion of all stages of the case to determine that all possibility of settlement has been exhausted and to set the case for trial.

## E. Discovery

### 1. Staging of Discovery

There will be no arbitrary discovery limits, but rather any limitations on the number of interrogatories, document requests, or depositions will be based on the particular needs of each case. Discovery will be staged according to the needs of each stage of the case (e.g., settlement, dispositive motions, and trial). If the case manager determines that the discovery necessary for the parties' evaluation of the case for settlement is less than that necessary for full trial preparation, discovery will be so limited and a settlement conference conducted before additional discovery is allowed. Similarly, once it is apparent that a dispositive issue exists and that a motion thereon will be filed, the case manager will determine if discovery can be limited to that issue and, if so, no further discovery will be permitted before a ruling on the dispositive motion.

In the event the proposed amendments to the Federal Rules of Civil Procedure pass Congress in their present form, the Court elects to opt out of the mandatory disclosure requirements to the full extent permitted by the proposed rules themselves, by the Civil Justice Reform Act, or by any other authority, for both those cases covered under and exempted from the customized case management plan.

## 2. Stays of Discovery

Absent special circumstances, during the pendency of any dispositive motion filed in accordance with the case management order, discovery will be automatically stayed. A party seeking to engage in discovery during the pendency of a dispositive motion, including discovery necessary for the resolution of the motion, has the right to file a motion to lift the stay of discovery. Except for discovery necessary to the resolution of the dispositive motion, the Court will lift the automatic stay only under special circumstances.

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If a dispositive motion is filed that is not provided for in the case management order, there will be no automatic stay of discovery. Any party may file a motion to request that the case manager stay discovery during part or all of the pendency of such a motion. Upon the filing of such a motion, the case manager may convene a conference with the parties or may rule on the motion without a conference. The case manager may stay discovery, upon the filing of a motion to stay, when the case manager finds that there is a substantial likelihood that a stay of discovery will avoid unnecessary cost.

## 3. Discovery Prior to Initial Case Management Conference

Although discovery requests can be made prior to the initial case management conference, responses to discovery requests are not required prior to the initial case management conference. At the initial case management conference, the case manager will determine what discovery should be provided, the extent to which it should be provided, and the timetable and deadlines for the phases of discovery.

A party seeking discovery responses prior to the initial case management conference must file a motion requesting such relief and serve it upon any other affected party. The case manager will not grant the motion absent compelling circumstances in order to maintain the integrity and efficacy of the case management process.

## F. Dispositive Motion Practice

As a general rule, whether or not the case manager is the Magistrate Judge, dispositive motions will be resolved in the first instance by the Article III Judge without referral to a Magistrate Judge.

This portion of the Plan does not alter the current practice of referring prisoner cases, Title VII cases, and Social Security cases to Magistrate Judges. That practice will be retained.

On very rare occasions, an Article III Judge or the case manager may identify cases, particularly those that involve review of an extensive factual record to determine the existence or absence of a genuine issue of material fact, as appropriate for referral to the Magistrate Judge for Report and Recommendation. In those cases, the Article III Judge will consider referring dispositive motions to Magistrate Judges, provided that undue delay does not occur as a result of any such referral. The Court will strictly enforce current Rule 8(b)(7) as a means to eliminate even the need for Magistrate Judge referral in factually complex cases. The referral of dispositive motions will not be used solely to assist in eliminating a backlog of cases.

If the case manager is the Magistrate Judge, when a dispositive motion is filed, the Magistrate Judge will obtain a proposed hearing date from the Article III Judge and will enter a notice to the Article III Judge and the parties of the filing of the dispositive motion and the proposed hearing date. The notice will also specify whether the dispositive motion was provided for in the case management order, whether discovery has been stayed, and whether there are any other factors that would require particularly expedited consideration of the dispositive motion.

The Clerk shall prepare a list of the dispositive motions pending before each Article III Judges on a monthly basis for circulation within the Court. Such list will reflect dispositive motions under advisement over 30 days, over 60 days, and over 90 days. Under this reporting system, a motion will be considered pending as soon as the last response or brief is filed. This reporting requirement is of particular importance to notify the Court of the pendency of the motions during which time discovery is stayed.

#### G. Trial Settings

The case manager will begin targeting time frames for the trial date early in the case management process in order to facilitate the setting of the trial date, but a trial date will not be set until it is known that a trial will most likely be needed. At that point, a trial date will be set quickly and firmly.

#### H. Implementation of Customized Case Management Plan

1. The Court approves for publication the local rule on customized case management proposed by the Advisory Group. The current Local Rule 11 will be rescinded.

2. The Court approves for publication the revision to Local Rule 8(b)(7) proposed by the Advisory Group.
3. The Court rescinds current Local Rule 12(c)(6)(c).

## II. Alternative Dispute Resolution

### A. General Description

The purpose of the Alternative Dispute Resolution Plan is to provide a mechanism by which the Court and the parties can consider alternative dispute resolution (ADR) techniques to aid in resolution of cases by settlement and thereby avoid the expense of trial and delay in adjudication. By use of early ADR techniques, settlements can be facilitated early in the proceedings, thereby reducing otherwise unnecessary time and expense of protracted pretrial proceedings, including discovery and other pretrial preparation.

The Alternative Dispute Resolution Plan is applicable to all civil cases filed in this District, including but not limited to those cases covered under the Customized Case Management Plan.

### B. Reference to Alternative Dispute Resolution Programs

1. The case manager (or, in cases not covered under the customized case management plan, that the District Judge or Magistrate Judge assigned to the case) may refer cases for any method of alternative dispute resolution provided by the Court, with or without the consent of the parties.<sup>26</sup>

2. The case manager (or, in cases not covered under the customized case management plan, that the District Judge or Magistrate Judge assigned to the case) may refer cases to alternative dispute resolution programs not provided by the Court only with the consent of the parties.

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<sup>26</sup> In making such referrals without the consent of the parties, the Court will satisfy itself that it is in compliance with the holding of the Court of Appeals for the Sixth Circuit in In re NLO, Inc., No. 93-3065 (September 17, 1993).

C. Judicially-Conducted Settlement Conferences

1. Applicability of Settlement Conferences

Although the propriety of a settlement conference and/or other types of ADR will be discussed by the parties and the case manager in the case management conferences conducted in cases covered under the customized case management plan, settlement conferences will be available for any cases filed in this District.

(a) If the case is covered under the customized case management plan, any party may request referral for a settlement conference in the course of a case management conference or by motion to the case manager, or the case manager may direct that the case be referred for a settlement conference.

(b) If the case is not covered under the customized case management plan, any party may request referral for a settlement conference by motion directed to the Judge assigned to the case or the Judge may direct that the case be referred for a settlement conference.

2. Settlement Judge

Settlement conferences will be conducted by a District Judge or Magistrate Judge other than the case manager, if any, and other than the Judge to whom the case is assigned for trial. The judicial officer to whom the case is assigned for a settlement conference shall be referred to as the "Settlement Judge."

3. Party Attendance

(a) Except as specifically provided in Section B(3)(c)(2) below, the case manager (or the Judge assigned to the case, if the case is not covered under the customized case management plan) or the Settlement Judge may order that representatives of the parties with settlement authority attend a settlement conference or be available by telephone.<sup>27</sup>

(b) If the United States is a party:

(1) If the potential settlement lies within the discretion of the United States Attorney, the case manager (or Judge assigned to the case, if the case is

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<sup>27</sup> The Court recognizes that, when parties are local and state governmental entities, it may be difficult or impossible for such parties to send representatives with full settlement authority.

not covered under the customized case management plan) or the Settlement Judge may order that the government have available by telephone the United States Attorney or his designated representative with full authority.

(2) If the potential settlement requires approval of the United States Department of Justice, the attorney for the United States should be prepared to forward final offers to the appropriate Department of Justice official and to advise the Court of the expected decision time.

#### 4. Party Statements

The procedure for filing party statements prior to the settlement conference will essentially track the existing procedures already utilized in this District.

(a) Each party shall deliver under seal to the courtroom deputy for the Settlement Judge an ex parte settlement conference statement, which specifies the settlement position of that party.

(b) The settlement statement shall contain a candid assessment of the strengths and weaknesses of both sides of the case, an appraisal of the issue of liability, an assessment of the economic cost of proceeding to trial, and a statement of the settlement authority extended by the client.

#### 5. Confidentiality

No part of any of the contents of the discussions or any statements made or information provided to the Court and/or to any other party or counsel during a settlement conference shall be used by any party for any purpose outside of the settlement conference. Likewise, all disclosures made to the Settlement Judge will be kept in strict confidence.

#### D. Implementation of Alternative Dispute Resolution Plan

##### 1. Creation of Alternative Dispute Resolution Committee

The Court will create an Alternative Dispute Resolution Committee to consider potential uses of alternative dispute resolution on an ongoing basis. The Committee, composed of a District Judge, a Magistrate Judge, a representative of the Clerk's Office, and representatives from the bar, will help keep the Court abreast of potentially helpful alternative dispute resolution developments.

2. The Court approves for publication the local rule on Alternative Dispute Resolution.

### III. Scheduling Civil Trial Weeks

#### A. General Description

The goal of customized case management is the easier and earlier identification of those cases that are, and those cases that are not, ultimately going to go to trial. For those cases identified by the parties and by the case manager as definitely going to trial, the customized case management plan assumes that at that point (and not at the outset of the case) a firm and final trial date will be assigned to the parties. To effectuate that feature of the customized case management plan, it is essential to implement a calendaring plan that will permit cases to be scheduled and tried on firm trial dates.

#### B. Implementation of Calendaring Plan

##### 1. Designation of Civil Trial Weeks

Each active District Judge will designate one week per month as a "civil trial week." During that week, civil trials will be scheduled with firm trial dates and, ideally, there will be no interruption of the scheduled civil trial(s) by criminal or other matters.

##### 2. Number of Civil Trials to Be Scheduled During A "Civil Week"

If a proposed civil trial is anticipated to be quite short (e.g., less than 10 hours), more than one civil trial may be scheduled during the civil trial week. Such cases will not be "double-set" in the formal sense of the word. Rather, these cases will be set "back-to-back," e.g., one trial set firmly to begin on Monday, and the second trial set almost equally firmly to begin on Wednesday or Thursday.

##### 3. Scheduling Civil Trials Without a Firm Trial Date

There may be some civil cases which will be given a "non-firm" trial date with the consent of the parties. Such a case might be one in which no out-of-town attorneys or witnesses or costly experts are expected to appear. In such a case, the parties might opt for a quicker, but non-firm, trial date by electing to be set behind a criminal case in one of the other three non-"civil trial week" weeks available on the court's calendar.

#### 4. Need for Adjustment in Scheduling the Rest of Each Month

Setting aside one week per month as a "civil trial week" will require some adjustment of the Court's remaining schedule. Particularly in the early stages of implementation and experiment, some innovation in scheduling may be desirable. For example, should the Court become aware that an impending criminal trial is likely to be lengthy, i.e., longer than one week, the Court will attempt to avoid setting such a case in the week preceding the "civil trial week." In the event of a very lengthy criminal case, e.g., one likely to last several weeks, other accommodations may have to be made. The criminal case may be set specially or the civil trial week may have to be moved well in advance to another month, resulting in two civil trial weeks in that particular month.

#### 5. Monday Scheduling

To make optimum use of the five-day week for firm civil trial settings, jury trials scheduled during the "civil trial week" will begin on Monday.

#### 6. Pooling Civil Trial Weeks

To optimize juror utilization, the Judges will normally set their civil trial weeks in pairs, with two Judges scheduling their civil weeks at the same time.

## PROPOSED LOCAL RULE

### CUSTOMIZED CASE MANAGEMENT

#### (a) **Purpose of Customized Case Management**

The purpose of customized case management is to provide mandatory, Court-supervised, case management tailored to the individual needs of each case subject to the plan. Management of cases is primarily and ultimately the responsibility of the lawyers acting in the best interests of their clients. Customized case management brings to bear the attention and resources of the Court in initiating case management, supervising its implementation and actively monitoring the progress of each case to assist the parties in achieving the most efficient planning, scheduling, and progression of the case. By early and continued assessment of the case, the Court will facilitate the just, speedy, and less costly disposition of civil actions filed in this District.

#### (b) **Application of Customized Case Management**

##### (1) Cases Subject to Customized Case Management

- a. All civil cases not specifically exempted by section (b)(2) of this Rule are subject to customized case management.
- b. The presiding judicial officer to whom a case is assigned may subject any of the exempted cases to the coverage of the Plan by order entered on a case-by-case basis.

##### (2) Cases Exempt from Customized Case Management

- a. Actions filed prior to the effective date of this rule; provided, however, that any District Judge may subject a case filed prior to the effective date of this rule if it is of clear benefit to the case;
- b. All actions in which one of the parties appears pro se;
- c. All prisoner petitions filed under 42 U.S.C. § 1983, or under 28 U.S.C. § 2254 and § 2255;
- d. All actions for judicial review of administrative decisions of government agencies or instrumentalities where the review is conducted on the basis of the administrative record;

3. Under appropriate circumstances, the first case management conference may be convened prior to any or all appearances of counsel for defendants.

b. Responsibility of Parties Prior to Initial Case Management Conference

1. Counsel for all parties shall, at the initiative of plaintiff's counsel, confer prior to the initial case management conference to discuss the issues enumerated in section (d)(1)(c) and section (d)(2) below and to determine if any issues can be resolved by agreement subject to approval by the case manager.

2. Counsel for all parties shall, at the initiative of plaintiff's counsel, prepare a proposed case management plan for submission to the case manager at the initial case management conference that encompasses the pertinent issues listed in section (d)(1)(c) and section (d)(2) below, and any issues that can be resolved by agreement.

c. Issues for Discussion at the Initial Case Management Conference

At the initial case management conference, the parties shall be prepared to discuss the following issues:

1. The status of service of process;
2. The status of responsive pleadings to the complaint;
3. Limitations on discovery
  - (a) The staging and timing of discovery for the phases of the case, including settlement, dispositive motions, and trial if necessary;
  - (b) The desirability of limiting discovery to certain claims and the propriety of limitations on the type and extent of discovery, including but not limited to the number of depositions and number of interrogatories, based on the particular needs and stages of the case and the cost of litigation;
  - (c) The necessity of any protective order or other limitations on discovery;

- (d) The need for any exceptions to the stay of discovery pursuant to section (e)(1) of this Rule; and
  - (e) Identification of any other disputes that may develop in the course of discovery.
4. Settlement
- (a) The prospects for settlement;
  - (b) The need for and timing of a settlement conference(s); and
  - (c) The propriety of utilizing other alternative dispute resolution techniques.
5. The need for adopting special procedures due to the complexity of the issues, multiple parties, difficult dispositive issues, or unusual proof problems.
6. To the extent practical at the initial case management conference, and to the extent appropriate for the specific case:
- (a) The formulation and simplification of issues, including elimination of frivolous or insubstantial claims or defenses and the formulation of each party's theory of the case;
  - (b) The identity, number, and names of potential witnesses; the possibility of early depositions of key witnesses, and the necessity for expert witnesses;
  - (c) If appropriate in cases involving comparative negligence, the identity of persons or entities that may be liable to or may have caused injury to the plaintiff(s) other than those persons or entities named as defendant(s);
  - (d) The possibility of obtaining admissions of fact and/or stipulations regarding the authenticity of documents that will avoid unnecessary discovery or proof;

- c. The identification of any issues resolved and those issues still in dispute;
- d. The need for counterclaims, cross-claims, third-party claims, amended pleadings, joinder of parties and/or claims, or class action certification, and the need for resolution of any issues arising from Rules 13-15, Rules 17-21, and Rule 23 of the Federal Rules of Civil Procedure;
- e. Deadlines for filing any dispositive motions and for filing any motions under Rules 13-15, Rules 17-21, and Rule 23;
- f. The delineation of the stages of discovery, discovery deadlines, and any limitations on discovery;
- g. Stay of discovery in accordance with section (e)(1) of this Rule and any exceptions to the stay of discovery;
- h. Deadlines for filing any other papers not described above, including but not limited to case management status reports;
- i. If appropriate, the scheduling of a settlement conference and/or the time frame for utilizing any other ADR program provided by the Court and/or, if agreed upon by the parties, any ADR program not provided by the Court;
- j. The scheduling of any necessary hearings on pending or anticipated issues before the case manager, including but not limited to issues of joinder of parties or claims;
- k. The scheduling of subsequent case management conference(s) and the requirement for pre-conference communications among the parties, if appropriate; and
- l. Any other matters appropriate to the needs of the case to aid in the just, speedy and less costly disposition of the case.

(3) Subsequent Case Management Conferences and Subsequent Case Management Orders

The case manager will schedule subsequent case management conferences and enter subsequent case management orders as appropriate to resolve remaining issues, to monitor the status of the case, or for any other reason tailored to the needs and complexity of the case to aid in the just, speedy and less costly disposition of the case. Subsequent case management conferences may be scheduled in the initial case management order and/or in the discretion of the case manager or at the request of any party.

Circumstances under which one or more subsequent case management conferences may be warranted are as follows:

- a. If the initial case management conference was held before all parties had entered appearances in the case and/or before the parties were sufficiently familiar with the case to engage in comprehensive discussion. In that event, the case manager will schedule a second case management conference as soon as practical to determine any unresolved issues;
- b. When an amendment to the case management order is sought;
- c. When a dispositive motion is filed that was not contemplated by the existing case management order;
- d. To monitor the status and progress of the case if the case has been pending for over six months since the last case management conference; and
- f. To schedule a settlement conference and/or to discuss other alternative dispute resolution techniques.

(4) Modifications of Case Management Orders

- a. The parties are not permitted to modify a case management order by stipulation among themselves without the approval of the case manager.
- b. Any party may file a motion to request that the case manager modify the case management order and/or to request a case management conference with the case manager at any stage of the proceeding.

c. Upon a motion of any party or sua sponte, the case manager may modify a case management order. The case manager may modify the case management order without a hearing or conference with the consent of the parties, but, except in unusual circumstances, a motion to modify a case management order should not be denied without a prior hearing or conference, either in person, by telephone or by other available means of teleconferencing.

d. Upon motion of any party or sua sponte, the case manager may convene a case management conference to discuss the impact of the filing of a dispositive motion, not otherwise provided for in the case management order, and the propriety of modifying the case management order.

(5) Final Case Management Conference & Scheduling for Trial

After all pretrial matters are resolved, including dispositive motions, the case manager will, as soon as practical, schedule a final case management conference to discuss the following:

- a. Whether, despite prior settlement and/or other ADR efforts, there remains any chance of settlement and, if so, the case manager will schedule a settlement conference as soon as possible, and/or will discuss any other alternative dispute resolution techniques;
- b. If the chances of settlement are minimal, the case manager will schedule the case for trial as soon as practical, with a firm trial date before the Article III Judge, unless the parties have consented to proceed to trial before the Magistrate Judge under 28 U.S.C. § 636(c), in which case the trial will be scheduled as soon as practical before the Magistrate Judge.
- c. If the case is scheduled for trial, the case manager will explore the possibility of obtaining admissions of fact or stipulations regarding the authenticity of documents, and will determine the need for any pretrial motions in limine;
- d. If the case is scheduled for trial, the case manager will issue a pretrial order, setting forth the following:
  1. The trial date;
  2. Deadlines for the identification of and exchange of witnesses and exhibit lists and pretrial briefs if appropriate;

3. Any special trial procedural issues resulting from the complexity or unusual nature of the case; and
4. The identification of expected motions in limine and the deadline for filing such motions and responses thereto.

(e) **Discovery**

(1) **Stays of Discovery**

a. **Prior to the Initial Case Management Conference**

1. Any party may make discovery requests prior to the initial case management conference, but, unless otherwise ordered by the case manager, no party is required to respond to such discovery requests until directed by the case manager at the initial case management conference.

2. Upon motion filed by a party seeking discovery responses prior to the initial case management conference, the case manager may direct that discovery responses be provided prior to the initial case management conference if the need for early discovery responses clearly outweighs the need for planning and limitations on discovery through the case management conference and case management order.

(a) Such motion may be filed contemporaneously with the complaint and served on the opposing parties with the complaint; or

(b) Such motion may be filed subsequent to the filing of the complaint, in which case the moving party must serve a copy of the motion upon all parties, whether or not they have entered an appearance in the case.

b. **During the Pendency of Dispositive Motions**

1. **During the Pendency of Dispositive Motions Filed in Accordance with Case Management Order**

(a) Except as provided below or except as specifically provided in the case management order, discovery will be stayed during the pendency of any dispositive motion filed in accordance with the case management order.

(b) Upon motion, the case manager shall permit discovery on matters related to the dispositive motion.

(c) Upon motion demonstrating special circumstances, the case manager may permit discovery on matters unrelated to the dispositive motion.

2. During the Pendency of Dispositive Motions Not Provided for in the Case Management Order

(a) Upon the filing of a dispositive motion that is not provided for in the case management order, discovery will not be stayed, except as specifically ordered by the case manager.

(1) Any party may file a motion to request that the case manager stay discovery during part or all of the pendency of a dispositive motion that is not provided for in the case management order;

(2) Upon the filing of such a motion, the case manager may convene a conference with the parties or may rule on the motion without a conference;

(3) The case manager may stay discovery, upon the filing of such a motion, when the case manager finds that there is a substantial likelihood that a stay of discovery will avoid unnecessary cost.

(b) Discovery shall not be stayed pending the resolution of the motion to stay discovery.

c. During the Pendency of Partially Dispositive Motions

Discovery will not be stayed during the pendency of a partially dispositive motion, such as a motion for partial summary judgment, unless, in the judgment of the case manager, discovery can be stayed only as to the issues related to that motion and/or the circumstances of the case justify a stay of part or all of discovery.

(2) Discovery Disputes

As part of the overall supervision of the progression of the case, the case manager will resolve any discovery disputes and discovery motions. See section (f)(2) below.

(f) **Motions**

(1) **Dispositive Motions**

a. As a general rule and absent exceptional circumstances, dispositive motions and other motions excepted from the coverage of 28 U.S.C. § 636(b)(1)(A) will be resolved by the Article III Judge assigned to the case without referral to a Magistrate Judge.

b. A dispositive motion may be filed at any time during the case if it is filed prior to the deadline provided by the case management order; provided, however, that modification of the case management order may be necessary pursuant to section (d)(4)(d) above.

c. If the Magistrate Judge is the case manager, the Magistrate Judge will enter a notice to the Article III Judge and the parties of the filing of the dispositive motion. The notice will also include the following provisions:

1. Whether or not the dispositive motion was provided for in the case management order, whether or not discovery is stayed, and any other factors that might require expedited consideration by the Article III Judge.
2. A briefing schedule for the response(s) to the dispositive motion and any supplemental filings, such as reply briefs, if appropriate.

Unless another deadline is set by the case manager in the notice or thereafter by the Article III Judge, the party opposing a dispositive motion has ten (10) days in which to file a response to a motion to dismiss and twenty (20) days in which to file a response to a motion for summary judgment. If the motion is designated as a motion to dismiss or, alternatively, a motion for summary judgment, the party opposing such motion has twenty (20) days to file a response, unless another deadline is set by the case manager or the Article III Judge.

3. A date for a hearing before the Article III Judge on the dispositive motion, in consultation with the courtroom deputy for the Article III Judge and in accordance with the briefing schedule.

- (a) Under normal circumstances, the hearing date will be scheduled within forty-five (45) days of the filing of the motion.
- (b) Upon review of the case, the Article III Judge may re-schedule the hearing or determine that a hearing is not necessary.

(2) Motions Covered Under 28 U.S.C. § 636(b)(1)(A)

a. The case manager will rule on all matters not specifically excepted from the coverage of 28 U.S.C. § 636(b)(1)(A).

b. If such an order is entered by a Magistrate Judge, review by an Article III Judge must be requested by motion filed within ten (10) days of the entry of the order by the Magistrate Judge unless another period of time is set by the case manager or the Article III Judge.

**PROPOSED LOCAL RULE**  
**ALTERNATIVE DISPUTE RESOLUTION**

(a) **Purpose of Alternative Dispute Resolution**

The purpose of alternative dispute resolution (ADR) is to provide a mechanism by which the Court and the parties can consider ADR techniques to aid in resolution of cases by settlement and thereby avoid the expense of trial and delay in adjudication. By use of early ADR techniques, settlements can be facilitated early in the proceedings, thereby reducing otherwise unnecessary time and expense of protracted pretrial proceedings, including discovery and other pretrial preparation.

(b) **Application of Alternative Dispute Resolution**

All cases filed in this District are subject to alternative dispute resolution, whether or not they are subject to customized case management.

(c) **Referrals to Alternative Dispute Resolution Programs**

(1) The case manager (or, if the case is not subject to customized case management, the District Judge or Magistrate Judge to whom the case is assigned) may refer the case for mediation, early neutral evaluation, a settlement conference, or any other non-binding method of alternative dispute resolution provided by the Court, with or without the consent of the parties.

(2) The case manager (or, if the case is not subject to customized case management, the District Judge or Magistrate Judge to whom the case is assigned) may refer the case out to any form of alternative dispute resolution service not provided by the Court with the agreement of the parties.

(d) **Judicially-Conducted Settlement Conferences**

(1) **Settlement Judge**

Settlement conferences will be conducted by a District Judge or Magistrate Judge other than the case manager, if any, and other than the Judge to whom the case is assigned for trial. The judicial officer to whom the case is assigned for a settlement conference shall be referred to as the "Settlement Judge."

(2) Scheduling Settlement Conferences

a. Cases Subject to Customized Case Management

1. The case manager may schedule a settlement conference as part of the case management order or as a result of discussions in a case management conference, with or without the consent of any or all parties.

2. Any party may file a motion requesting that the case manager schedule a settlement conference, if a settlement conference is not otherwise provided in the case management order.

b. Cases Not Subject to Customized Case Management

Upon motion of any party or sua sponte, the District Judge or Magistrate Judge to whom the case is assigned may schedule a settlement conference, with or without the consent of any or all parties.

(3) Party Attendance

a. Except as otherwise provided in sub-section 2 below, the case manager or the Settlement Judge may require that the parties or their representatives with full settlement authority attend the settlement conference or be available by telephone.

b. Cases in Which the United States is a Party

In cases in which the United States is a party, the attorney for the government at the settlement conference is expected to have a clear understanding of his or her settlement authority limits.

1. In cases in which the potential settlement lies within the discretion of the United States Attorney for this District, the government representative shall have available by telephone the United States Attorney or his designated representative with full settlement authority.

2. In cases in which the potential settlement requires approval of the United States Department of Justice, the government attorney shall be prepared to forward final offers to the appropriate Department of Justice official and to advise the Court of the expected decision time. The attorney for the government is expected to make every effort to secure a speedy decision on any proposed settlement offer referred to the Department of Justice.

(4) Settlement Statements

a. Procedures for Submission

1. At least three (3) days before the settlement conference, each party shall deliver under seal, directly to the courtroom deputy for the Settlement Judge, an ex parte settlement conference statement, which shall specify the party's settlement position.

2. The settlement statement shall be furnished only to the Court and not to any other party, nor shall it be filed with the Clerk of the Court.

b. Contents of the Settlement Statement

1. The settlement statement shall contain a candid assessment of the strengths and weaknesses of both sides of the case, an appraisal of the issue of liability, and an assessment of the economic cost of proceeding to trial.

(a) Plaintiff's settlement statement shall contain an assessment from plaintiff's viewpoint of damages and the strengths and weakness of plaintiff's position.

(b) Defendant's settlement statement shall contain an assessment of the plaintiff's damages, defendant's exposure to those damages and the respective strengths and weaknesses of defendant's position.

2. The settlement statement shall contain a statement of the settlement authority extended by the client based on the attorney's written evaluation and opinion which shall be furnished to the client in sufficient time to obtain express settlement instructions.

c. Confidentiality

No part of any of the contents of the discussions or any statements made or information provided to the Court and/or to any other party or counsel during a settlement conference shall be used by any party or repeated to or otherwise provided to any other person by any party for use in the litigation or any other litigation for any purpose whatsoever or for any other purpose not in connection with the case or any other litigation. This protection includes but is not limited to the protection provided by Rules 408 and 409 of the Federal Rules of Evidence. Likewise, all disclosures made to the Settlement Judge will be kept in strict confidence.

**AMENDMENT TO LOCAL RULE 8(b)(7)**

(7) Motions for Summary Judgment

(a) Motions for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure shall be in accordance with that Rule except that the party opposing the motion shall have twenty (20) days after service of the motion in which to serve a response.

(b) Any motion for summary judgment made pursuant to Rule 56 of the Federal Rules of Civil Procedure shall be accompanied by a separate, concise statement of the material facts as to which the moving party contends no genuine issue exists. Each fact shall be set forth in separately numbered paragraphs. Each fact shall be supported by specific citation to the record. After each paragraph, a blank space shall be provided reasonably calculated to enable the non-moving party to respond to the assertion that the fact is undisputed.

(c) Any party opposing the motion for summary judgment must respond to each fact listed by the movant on the document provided by the movant by either (i) agreeing that the fact is undisputed; (ii) agreeing that the fact is undisputed for the purpose of ruling on the motion for summary judgment only; or (iii) stating that the fact is disputed. Each disputed fact must be supported by specific citation to the record. If the movant has not provided sufficient space to enable the non-movant to respond, the non-movant may attach a separate sheet or sheets of paper. Such response shall be filed with the papers in opposition to the motion for summary judgment.

(d) For purposes of this rule, the term "record" shall include deposition transcripts, answers to interrogatories, affidavits, and documents filed in support of or opposition to the motion or documents otherwise in the Court file.

Civil Justice Reform Act  
Advisory Group  
for the Middle District  
of Tennessee

**APPENDICES**

**VOLUME II**  
**of**  
**FINAL REPORT**

**Civil Justice Reform Act Advisory Group  
for the Middle District of Tennessee**

November, 1993

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## APPENDIX A

### JUDICIAL OFFICERS OF THE MIDDLE DISTRICT OF TENNESSEE

As of November 1993

**Chief Judge John T. Nixon.** Appointed United States District Judge May 16, 1980. Appointed Chief Judge August 1, 1991. Eligible to retire or take senior status January 9, 1998.

**Judge Thomas A. Wiseman, Jr.** Appointed United States District Judge August 1, 1978. Served as Chief Judge from August 1, 1984, until August 1, 1991. Eligible to retire or take senior status November 3, 1995.

**Judge Thomas A. Higgins.** Appointed United States District Judge December 3, 1984. Eligible to retire or take senior status December 3, 1998.

**Judge Robert L. Echols.** Appointed United States District Judge April 20, 1992. Eligible to retire or take senior status January 13, 2007.

**Senior District Judge L. Clure Morton.** Appointed United States District Judge October 26, 1970. Served as Chief Judge from August 15, 1977, until July 31, 1984. Became a Senior Judge July 31, 1984. Presides over the Northeastern Division in Cookeville.

**Magistrate Judge Kent Sandidge III.** Appointed United States Magistrate September 7, 1972. Reappointed to second term October 31, 1980. Reappointed to third term October 31, 1988. Eligible for full retirement December 28, 1994.

**Magistrate Judge William J. Haynes, Jr.** Appointed United States Magistrate December 7, 1984. Reappointed December 7, 1992. Eligible for full retirement September 5, 2014.

**Bankruptcy Judge George Paine.** Appointed United States Bankruptcy Judge October 15, 1981. Reappointed October 1, 1986. Eligible for full retirement October 31, 2010.

**Bankruptcy Judge Keith Lundin.** Appointed United States Bankruptcy Judge May 25, 1982. Reappointed October 1, 1986. Eligible for full retirement May 25, 2016.

## APPENDIX B

### MEMBERS OF THE CIVIL JUSTICE REFORM ACT ADVISORY GROUP

**R. Dale Grimes, Chair.** Partner, Bass, Berry & Sims. Former law clerk to Honorable L. Clure Morton, U.S. District Court, Middle District of Tennessee. B.A., University of the South, 1975. J.D., University of Tennessee College of Law, 1978. Past Chair, Federal Court Committee, Nashville Bar Association. Chairman, Board of Regents, University of the South.

**George E. Barrett.** Partner, Barrett, Johnston & Parsley. B.S.S., Spring Hill College, 1952. Diploma in Economics and Politics, Oxford University, England, 1953. J.D., Vanderbilt University School of Law, 1957. Past Secretary, Tennessee Advisory Committee, United States Commission on Civil Rights. Past President, Nashville Council on Human Relations. Past President, Tennessee Council on Human Relations. Past Member, Governor's Commission on Human Relations. Past Member, Tennessee Supreme Court Committee on Appellate Court Jurisdiction. Past Member, Advisory Commission to the Tennessee Supreme Court on the Rules of Civil Procedure. Past Chair, Labor Law Section, Tennessee Bar Association. Life Member, Sixth Circuit Judicial Conference.

**Barbara Bennett.** Assistant General Counsel, Vanderbilt University. Former associate, Liskow & Lewis, New Orleans, Louisiana. Former associate, Barham & Churchill, New Orleans, Louisiana. Former law clerk to Honorable Thomas A. Wiseman, Jr., U.S. District Court, Middle District of Tennessee. B.A., Vanderbilt University, 1973. J.D., Vanderbilt University, 1983. Member, Board of Directors, National Association of College and University Attorneys. Reporter, Tennessee Supreme Court Commission on Dispute Resolution. Chair, Nashville Bar Association Committee on Alternative Dispute Resolution. Past Chair, Corporate Counsel Committee of the Nashville Bar Association. Past member, Tennessee Bar Association Commission on the Status of Women and Minorities in the Profession.

**Andrée Sophia Blumstein.** Partner, Sherrard & Roe. Lecturer in Law, Vanderbilt University Law School. Former partner, Trabue, Sturdivant & DeWitt. B.A., Vassar College, 1967. Ph.D. in German Literature, Yale University, 1973. J.D., Vanderbilt University School of Law, 1981. Past Chair, Antitrust & Business Regulation Section, Tennessee Bar Association. Past Chair, Appellate Practice Committee, Nashville Bar Association. Former Tennessee Bar Association representative to the Tennessee Codes Commission. Vice-President Elect, Nashville Chapter, Federal Bar Association. Leadership Nashville, class of 1993.

**G. Gordon Bonnyman.** Attorney, Legal Services of Middle Tennessee, Inc. Former clinical law instructor, Vanderbilt University Law School. B.A., Princeton University, 1969. J.D., University of Tennessee School of Law, 1972. Past member, Nashville Bar Association Board of Directors. Member, Tennessee Governor's Medicaid Task Force. Member, Tennessee Supreme Court Commission on the Future of the Courts. Member, Nashville Mayor's AIDS Task Force. Member, Poverty & Race Research Action Council. Member, Nashville Council on Aging.

**Edmund L. Carey, Jr.** Associate, Neal & Harwell. Former Lecturer in law, Vanderbilt University School of Law. Former law clerk to the Honorable Thomas A. Wiseman, Jr., U.S. District Court, Middle District of Tennessee. Former law clerk to the Honorable Gilbert S. Merritt, United States Court of Appeals for the Sixth Circuit. B.A., Holy Cross College, 1965. M.D., Harvard Medical School, 1970. J.D., Vanderbilt University Law School, 1986. Past Chair, Federal Court Committee, Nashville Bar Association.

**Fred Cloud.** Adjunct Professor of Sociology and Psychology, American Baptist College. Editor-in-Chief, Journal of Intergroup Relations. Past Executive Director, Metro Human Relations Commission. Former pastor, United Methodist Churches in Middle Tennessee. B.A., Vanderbilt University, 1944. M.Div., Vanderbilt University Divinity School, 1947. M.A., Scarritt College, 1961. D.Min., Vanderbilt Divinity School, 1990. Member, Tennessee Master Plan Committee on Mental Health. Past President, National Association of Human Rights Workers. Past President, Tennessee Association of Human Rights Workers. Past Vice-President, Nashville Association of Rabbis, Priests and Ministers. Past Chair, Mayor's Committee on Refugee and Immigration Affairs.

**Jerry C. Colley.** Partner, Colley & Colley, Columbia, Tennessee. Former partner, Colley, Blank & Jack, Columbia, Tennessee. Former partner, MacFarland & Colley, Columbia, Tennessee. George Peabody College. J.D., Vanderbilt University School of Law, 1951. Past President, Maury County Bar Association. Fellow, American College of Trial Lawyers. Member, Board of Professional Responsibility for the Tennessee Supreme Court.

**Waverly D. Crenshaw, Jr.** Associate, Waller, Lansden, Dortch & Davis. Former Assistant Tennessee Attorney General. Former law clerk to Honorable John T. Nixon, U.S. District Court, Middle District of Tennessee. Former law clerk to Honorable C. Allen High, Robert S. Brandt and Irvin H. Kilcrease, Jr., Chancery Court, Davidson County, Tennessee. B.A., Vanderbilt University, 1978. J.D., Vanderbilt University School of Law, 1981. President, Napier-Looby Bar Association. Past Secretary-Treasurer, Nashville Bar Association.

**Betty D. Daugherty.** Assistant Corporate Secretary, Hospital Corporation of America and Vice-President of its affiliated companies. Former paralegal, Butler, Tune & Entrekin. University of Tennessee at Nashville. M.B.A., Jack C. Massey Graduate School of Business, Belmont University, 1991. Member, Dispute Resolution Section, American Bar Association. Adviser, Center for Public Resources Alternative Dispute Resolution Project. Member, Nashville Child Advocacy Task Force. Consultant, Center for NonProfit Management. Director, Rape and Sexual Abuse Center. Member, Board of Advisers and Admissions Committee, Southeastern Institute for Paralegal Education, Inc.

**John A. Day.** Shareholder, Branham & Day, P.C. Former Partner, Boulton, Cummings, Conners & Berry. B.A., University of Wisconsin, 1978. J.D., University of North Carolina, 1981. President, Tennessee Trial Lawyers Association. Member, Statewide Legal Committee, American Civil Liberties Union. Member, Tennessee Supreme Court Commission on Dispute Resolution. Member, Federal Rules, Jurisdiction and Venue Committee, Association of Trial Lawyers of America. Trustee, Lawyers Involved for Tennessee. Past Chair, Nursing Home Litigation Group, Association of Trial Lawyers of America. Past Chair, Circuit and Chancery Court Committee, Nashville Bar Association. Member, Harry Phillips American Inns of Court.

**Kimberly J. Dean.** Deputy Attorney General, Civil Rights & Claims Commission Division, Office of the Tennessee Attorney General & Reporter. Former attorney, Office of Legal Services for the Tennessee General Assembly. Former law clerk, Honorable Ben Cantrell, Tennessee Court of Appeals. B.A., University of Georgia, 1976. J.D., Vanderbilt University Law School, 1979.

**Richard H. Dinkins.** Partner, Williams & Dinkins. B.A., Denison University, 1974. J.D., Vanderbilt University School of Law, 1977. Commissioner, Davidson County Election Commission. Cooperating Attorney, NAACP Legal Defense and Educational Fund, Inc. Cooperating Attorney, Minority Business Enterprise Legal Defense and Educational Fund, Inc. Member, Board of Governors, Tennessee Trial Lawyers Association. Past President, Napier-Looby Bar Association. Barrister, Harry Phillips American Inns of Court. Past Member, Middle Tennessee Chapter, American Civil Liberties Union Board of Directors. Past member, Board of Directors, Nashville Bar Association. Past President, Legal Services of Middle Tennessee, Inc. Leadership Nashville, class of 1986. Trustee, First Baptist Church.

**Barry Friedman.** Professor of Law, Vanderbilt Law school. Former associate, Davis, Polk & Wardwell, Washington, D.C. Former adjunct professor, Georgetown University Law Center. Former law clerk to Honorable Phyllis A. Kravitch, United States Court of Appeals for the Eleventh Circuit. A.B., University of Chicago, 1978. J.D., Georgetown University Law Center, 1982. Vice-Chair, Charter Revision Commission, Nashville-Metropolitan Davidson County. Member Executive Committee and Board of Directors, American Judicature Society. Member, Advisory Board, State and Local Legal Center of the Academy for State and Local government. Former Consultant, Federal Courts Study Committee. Former Consultant, Advisory Commission on Intergovernmental Relations, Legislative Solutions to Preemption Doctrine. Former Consultant, National Institute of Municipal Law Officers, Subcommittee on Tenth Amendment. Former Consultant, National Conference of State Legislatures' Law and Justice Committee.

**C.J. Gideon, Jr.** Partner, Gideon & Wiseman. A.B., Duke University, 1975. J.D., Vanderbilt University School of Law, 1978. Tennessee Hospital Attorneys Association. Member, Harry Phillips American Inns of Court. Medical-Legal Committee, Defense Research Institute.

**Richard Banner Hart.** Special Counsel, Bowne of Nashville, Inc. Former Vice-President, Secretary and General Counsel, Intereal Co. Former Vice-President, Secretary and Associate General Counsel, American General Insurance Companies. Former Secretary and Counsel, NLT Corp. and National Life and Accident Insurance Company. A.B., University of North Carolina, 1957. J.D., University of North Carolina, 1959.

**Joseph L. (Jack) May.** Private practitioner. Businessman and former President and Chairman, May Hosiery Mills. Central Intelligence Agency, 1951-55. B.A., Yale College, 1951. J.D., New York University, 1958. Director, various Merrill Lynch mutual funds. Panel member, American Arbitration Association.

**Thomas R. McCoy.** Professor of Law, Vanderbilt University School of Law. B.S., Xavier University, 1964. Former Associate Dean for academic affairs, Vanderbilt University School of Law. J.D., University of Cincinnati College of Law, 1967. LL.M., Harvard Law School, 1968. Member, Tennessee Supreme Court Commission on Dispute Resolution. Member, Alternative Dispute Resolution Committee, Tennessee Bar Association. Member, American Arbitration Association Complex Case Program Advisory Council. Member, American Arbitration Association Complex Case Panel. Past Consultant, Metropolitan Nashville Development and Housing Authority, mediation and community dispute resolution programs.

**George B. McGugin.** Partner, Watkins, McGugin, McNeilly & Rowan. B.A., Vanderbilt University, 1962. J.D., Vanderbilt University School of Law, 1965. Former member, Board of Directors, Nashville Bar Association. Past President, International Association of Defense Counsel. Past member, Board of Directors and member of Executive Committee, Defense Research Institute. Fellow, American College of Trial Lawyers. Member, Board of Trustees, Montgomery Bell Academy.

**Barbara J. Moss.** Partner, Gullett, Sanford, Robinson & Martin. Former associate, Boulton, Cummings, Connors & Berry. Lecturer in Law, Vanderbilt University School of Law. B.A., Vanderbilt University, 1972. J.D., Vanderbilt University School of Law, 1977. Member, Board of Professional Responsibility for the Tennessee Supreme Court. Member, Board of Directors, Nashville Bar Association. President-Elect, Lawyers Association for Women, Marion Griffin Chapter.

**Dan L. Nolan.** Partner, Daniel, Harvill, Batson & Nolan, Clarksville, Tennessee. J.D., University of Tennessee, 1964. B.S., University of Tennessee, 1966. Past President, Montgomery County Bar Association. Past Vice-President, Tennessee Bar Association. Member, Board of Governors, Tennessee Bar Association. Member, American Board of Trial Advocates. Fellow, Tennessee Bar Foundation. Fellow, American College of Trial Lawyers. Member, Tennessee Supreme Court Hearing Committee for State of Tennessee Board of Professional Responsibility.

**Jimmie Lynn Ramsaur.** Assistant United States Attorney, Middle District of Tennessee. Former partner, Shipley & Behm. Former Assistant Metropolitan Public Defender, Nashville, Tennessee. Former Managing Attorney, Legal Services of Middle Tennessee, Inc. B.A., Lambuth College, 1973. J.D., University of Tennessee College of Law, 1977. Fellow, Nashville Bar Foundation. Past Chair, Federal Court Committee, Nashville Bar Association. Past Chair, General Sessions Committee, Nashville Bar Association. Past Secretary, Lawyers Association for Women, Marion Griffin Chapter. Past Member, University of Tennessee College of Law Alumni Advisory Committee. Past President, Board of Directors, Opportunity House.

**William P. Redick, Jr.** Director, Capital Case Resource Center of Tennessee. Former Assistant Federal Public Defender, Middle District of Tennessee. Former private practitioner. Former Director of Treatment Alternatives to Street Crime Project, Office of Davidson County District Attorney. Former Legal Counsel, Court's Task Force of the National Advisory Commission on Criminal Justice Standards and Goals, United States Department of Justice. Former law clerk to Honorable Alfred Burka, Superior Court of the District of Columbia. B.A., Centre College, 1965. J.D., University of Tennessee College of Law. Chair, Death Penalty Committee, Tennessee Association of Criminal Defense Lawyers.

**David Randolph Smith.** Private practitioner. Former partner, Kinnard and Smith. Former Assistant Professor, Vanderbilt University School of Law. B.A., Harvard University, 1975. J.D., University of Texas, 1978. Past Research Scholar, Vanderbilt University Medical Center for Clinical and Research Ethics. Former Commentator, Law and Medicine Committee, Tort and Insurance Practice Section, American Bar Association.

**Thomas O.H. Smith, Jr.,** In-House Counsel, United States Fidelity and Guaranty Insurance Company. Former partner, Smith, Davies, Smith & Cantrell. B.A., University of the South. J.D., Vanderbilt University School of Law.

**Robert C. Watson.** Assistant United States Attorney and Chief of Civil Division, Middle District of Tennessee. Lecturer in Law, Vanderbilt University School of Law. Former Assistant United States Attorney, Middle District of Alabama. Former private practitioner with Woods, Bryan, Woods & Watson. Former law clerk to the Honorable Robert Varner, Middle District of Alabama. B.A., Vanderbilt University, 1967. J.D., Vanderbilt University School of Law, 1974. M.S. in criminal justice, Vanderbilt University, 1978. Past President, Nashville Chapter, Federal Bar Association. Past member, Sixth Circuit Pattern Jury Instructions Committee.

**Mariah A. Wooten.** Deputy Federal Public Defender, Middle District of Tennessee. Former private practitioner. Former Assistant Metropolitan Public Defender, Nashville, Tennessee. B.A., Fisk University, 1972. J.D., University of Tennessee College of Law, 1978. Member, Metropolitan Nashville Beer Board. Past President, Napier-Looby Bar Association. Past Secretary-Treasurer, Nashville Bar Association. Past Board Member, Tennessee Association of Criminal Defense Lawyers. Past Board Member, Lawyers Association for Women, Marion Griffin Chapter.

**Juliet Griffin, Reporter.** Clerk, United States District Court, Middle District of Tennessee. Former staff attorney, Legal Services of Middle Tennessee, Inc. Former law clerk to Honorable Thomas A. Wiseman, Jr., Middle District of Tennessee. B.A., Oberlin College, 1971. J.D., University of Tennessee, 1978. Fellow, Tennessee Bar Foundation. Fellow, Nashville Bar Foundation. Past President, Nashville Bar Association.

## APPENDIX C

### **METHODOLOGY UTILIZED BY CJRA ADVISORY GROUP FOR COLLECTION OF DATA AND ASSESSMENT OF THE CIVIL AND CRIMINAL DOCKETS**

The Advisory Group collected and studied considerable data concerning the docket in this District. It distributed questionnaires to counsel in a sample of 180 cases and to the litigants in those cases. It studied the results of these questionnaires, together with thorough reviews of the cases themselves. It also reviewed the multitude of statistical information about this District. Other data was collected and studies conducted to evaluate the civil and criminal dockets in this District and to assist in the assessment of the causes of cost and delay. Finally, statistics compiled periodically by the Administrative Office of the United States Courts and the Court of Appeals for the Sixth Circuit on workload, motions and pending cases were reviewed and analyzed.

#### 1. Sample Study of Civil Cases

The initial step of the Advisory Group was to devise, with the assistance of the Federal Judicial Center, a sample of 180 civil cases closed within a 21 month period between July 1, 1989, and March 31, 1991. During that period, 2663 civil cases were closed. Of that number, 312 were PCB products liability cases, accounting for 11.7% of the cases closed. Because those cases represented an anomaly in filings and closures, they were excluded from the total study sample, reducing the total study sample to 2351. Of the 2351 cases closed during the study period, excluding the PCB cases, prisoner litigation accounted for 32.3% of the cases closed during the period of study. Because prisoner litigation was studied separately, they were not included in the sample study. Also excluded because of the lack of concern with cost and delay were student loan cases and recovery of veterans benefit overpayments, comprising together 3.7% of the cases closed. Also excluded from the study because of the specialized nature of the type of cases were Bankruptcy appeals and withdrawals of references from Bankruptcy Court, comprising 2.3%, and Social Security cases, comprising 4.1%. The remaining civil cases were chosen for study by case category with a number within each category that was proportionate to the number of total cases closed within the sample period. The ten categories of cases chosen for study are listed in Exhibit 1 to this Appendix.

The study included cases assigned to active District Judges Wiseman, Nixon, and Higgins. The study did not include cases assigned to Senior District Judge Morton because of the low number of Northeastern Division cases in the above categories and because of the lack of any empirical or anecdotal indication that there was any incidence of undue cost and delay in the Northeastern Division. Cases were chosen within each category in an approximately equal number for each judge. To permit a comparative assessment of cases with a longer life span to cases with more moderate life spans, in each category of cases, one-half of the cases were selected from those cases whose life span was in the 20th highest percentile and one-half of the cases were selected from those cases whose life span was within the 50th to 70th percentile of each case category.

a. Questionnaires to Lawyers

A comprehensive, twenty page questionnaire was developed with the assistance of a Professor of Sociology at Vanderbilt University. It was designed to solicit information concerning the causes of cost and delay, activities that increased or reduced cost and delay, and other information not discernible from the docket sheets. A copy of the questionnaire is attached as Exhibit 2 to this Appendix. Almost 460 questionnaires were distributed to all lawyers of record in the 180 sample cases. The return rate was 44.5%, reflecting 205 returned questionnaires.

With the assistance of a computer programmer from Vanderbilt University, the Advisory Group correlated the questionnaire responses and analyzed the data. The report of the data analysis is attached as Exhibit 3 to this Appendix.

b. Questionnaires to Litigants

After the attorney questionnaires were returned, a follow-up letter and questionnaire were distributed to the attorneys who returned questionnaires, requesting that they forward the litigant questionnaire to their clients in the specific cases. The response rate for return of the litigant questionnaire was minimal and not deemed to be significant enough to consider. A copy of the litigant questionnaires is attached as Exhibit 4 to this Appendix.

c. Docket Sheet Review

In each of the 180 sample cases, the Clerk's office prepared a Docket Sheet Review, which listed general information about the case, including the reason the case was closed and total time for disposition, as well as specific information on the length of time for various stages of the case, including discovery, motion filing, and scheduling

order information. A sample of a completed docket sheet review form is attached as Exhibit 5 to this Appendix. In addition, the Clerk's office prepared a form for Motion Disposition Time for each substantive motion filed in each of the 162 sample cases. A sample of a completed Motion Disposition Time form is attached as Exhibit 6 to this Appendix.

The Docket Sheet Review forms, the Motion Disposition Time forms, and copies of the docket sheets in each of the 180 cases were provided to the Advisory Group committee members for their review and analysis.

## 2. Survey of Litigants in Prisoner Cases

A short survey was sent to frequent prisoner litigants, defendants frequently sued by prisoners, counsel who regularly appear in prisoner cases, and others with substantial interest in prisoner litigation. A copy of the survey and the categories of respondents to the questionnaire are attached as Exhibit 7 to this Appendix.

## 3. Assessment of Criminal Docket & Study of Trials & In-Court Time

The Clerk's office collected data reflecting the average time per criminal trial, the average time per civil trial, the total number of civil and criminal trials and in-court time spent on civil and criminal matters in the years 1985 through 1992, for Judge Nixon, Judge Wiseman, Judge Higgins, and for 1992, for Judge Echols.<sup>1</sup> This data was further broken down into time spent in court on pleas and sentencings, and whether such pleas and sentencings were subject to the Sentencing Guidelines. The year 1985 was chosen as a baseline year because it preceded the Sentencing Guidelines and mandatory minimum legislation and because it was Judge Higgins' first full year on the bench. This data is attached as Exhibit 8 to this Appendix.

## 4. Data Collected on Dispositive Motions & Referrals to Magistrate Judges

The Clerk's office collected data reflecting the dispositive motions pending as of June 18, 1992, for each active District Judge, indicating the type of motion, filing date, whether or not it had been referred to a Magistrate Judge for a Report and Recommendation, whether the motion had been pending over six months, and the dates the case had been scheduled for trial by orders entered prior to June 19, 1992. This data is attached as Exhibit 9 to this Appendix. In addition, the Clerk's office collected data

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<sup>1</sup> Judge Echols took the bench on April 20, 1992. Therefore, the data collected on his cases includes the last eight months of calendar year 1992.

on referrals of cases and motions to the Magistrate Judges during the period October 1, 1991, through May 31, 1992, and those referrals that were still active during that period even though the referrals were initially made prior to October 1, 1991. This data is attached as Exhibit 10 to this Appendix.

5. Data Collected on Trial Settings

To determine how firmly trial dates were set, the Clerk's office collected data for each active District Judge during the period October 1, 1991, through May 31, 1992, on the criminal and civil cases scheduled for trial, the cases actually tried on the scheduled dates, and the reason for the cases not being tried on the scheduled dates, if applicable. This data is attached as Exhibit 11 to this Appendix.

6. Data Collected on Trial Interruptions

To determine how frequently trials were interrupted by other matters, the courtroom deputies maintained logs of courtroom activity during a three-month period between June 29, 1992, and September 30, 1992. This data and bar graphs are attached as Exhibit 12 to this Appendix.

7. Interviews with Judicial Officers and Court Personnel

Members of the Advisory Group met with each active District Judge, each Magistrate Judge, the Judges' staff, including law clerks and secretaries, the United States Attorney, and members of the Clerk's office staff, including courtroom deputies, docket clerks, the pro se law clerk, and the systems administrator.

## **EXHIBIT 1 TO APPENDIX C**

### **TYPES OF CASES INCLUDED IN SAMPLE STUDY**

#### **Of Cases Closed Between July 1, 1989, and March 31, 1991**

The attached chart shows the total number of cases closed during the study period for each category of cases, the percentage of cases closed during the study period represented by the number of cases closed in each case category, the number in the sample for each case category, and the range of the lifespan (i.e., the age of the case at the time the case is closed) for each category of case used in the sample.

The listing of the specific cases used in the sample study is on file in the Clerk's office.

**SAMPLE OF  
CASES CLOSED DURING JULY 1, 1989, AND MARCH 31, 1991  
USED IN SURVEY**

CATEGORY	NUMBER OF CASES CLOSED			RANGE OF LIFESPAN OF SAMPLE CASES IN MONTHS	
	Total	Percentage of Total Cases Closed	Number in Sample*	50th - 70th Percentile	Highest 20th Percentile
Civil Rights - Jobs	88	3.7%	12	10.4 - 13.6 mo.	24.9 - 78.3 mo.
Other Non-Prisoner Civil Rights	165	7.0%	24	7.3 - 9.9 mo.	14.7 - 40.4 mo.
Labor	92	3.9%	12	8.2 - 11.8 mo.	22.1 - 36.8 mo.
Insurance	68	2.9%	12	12.2 - 14.3 mo.	21.0 - 108.1 mo.
Contract (Other than Insurance)	295	12.6%	36	6.6 - 9.8 mo.	14.2 - 59.2 mo.
Tax	63	2.7%	12	6.4 - 9.0 mo.	11.9 - 26.1 mo.
Motor Vehicle Personal Injury	78	3.3%	12	10.3 - 13.6 mo.	15.8 - 24.8 mo.
All Other Tort	253	10.8%	24	10.0 - 14.5 mo.	21.6 - 45.2 mo.
Possibly Complex	161	6.9%	24	10.6 - 16.4 mo.	22.9 - 51.5 mo.
All Other	89	3.8%	12	6.1 - 9.7 mo.	13.6 - 14.1 mo.

\*One-half of the cases was taken from the 50th to 70th percentile and one half from the 80th to 100th percentile

**EXHIBIT 2 TO APPENDIX C**

**QUESTIONNAIRE FOR ATTORNEYS IN SAMPLE CIVIL CASES**

The attached questionnaire was distributed to all attorneys of record (approximately 460) in the 180 sample civil cases closed between July 1, 1989, and March 31, 1991.

The questionnaire responses are on file in the Clerk's office. However, the respondents were assured confidentiality. Therefore, the individual responses cannot be released.

**QUESTIONNAIRE FOR ATTORNEYS IN CIVIL CASES**  
**CIVIL JUSTICE REFORM ACT ADVISORY GROUP**  
**FOR THE MIDDLE DISTRICT OF TENNESSEE**

Case: \_\_\_\_\_

Number: \_\_\_\_\_

Please return this questionnaire by December 10, 1991, in the enclosed envelope to Dale Grimes, 2700 First American Center, Nashville, TN 37238. If you have any questions, please call Dale Grimes at (615) 742-6244 or Juliet Griffin at (615) 736-7763.

Thank you for your time and attention.

**A. DESCRIPTION OF CONTROVERSY**

1. The following are broad categories of cases that are part of this survey. Please identify the type of case this was. (Circle as many as apply)
  - a. Civil rights/jobs
  - b. Other civil rights
  - c. Labor
  - d. Insurance
  - e. Contract (other than insurance)
  - f. Tax
  - g. Motor Vehicle Personal Injury
  - h. Tort (other than motor vehicle personal injury)
  - i. Securities
  - j. Antitrust
  - k. Intellectual property (patent, copyright, trademark)
  - l. Civil RICO
  - m. Banks/banking
  - j. Other statutory actions

k. None of the above

2. Please approximate the potential monetary recovery or exposure, if any, for your client(s):

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3. Did your client(s) have any other, significant interests at stake, such as need for injunctive relief, matter of principle, concern about future litigation, possibility of legal precedent of significant consequence, professional reputation, etc.?

a. No

b. Yes

If yes, please specify:

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**B. TIMELINESS OF DISPOSITION OF THIS CASE**

4. As to your client(s), how long did this case take to conclude from filing to disposition?

\_\_\_\_\_ Months

5. Was the time from filing to disposition, as to your client(s):

a. Much too long

b. Somewhat too long

c. Reasonable

d. Too short

IF YOU ANSWERED (C) OR (D), SKIP TO QUESTION 7.

6. If you believe that the time from filing to disposition was too long as to your client(s), please indicate the significant causes of the excessive length of time. Please circle all significant causes and provide any additional reasons:

- a. Excessive intervention or supervision by the Court
- b. Insufficient amount of intervention or supervision by the Court
- c. Ineffective intervention or supervision by the Court
- d. The Court's failure to rule promptly on motions
- e. Actions by the Court, other than failure to rule promptly on motions.

Please specify: \_\_\_\_\_

- f. Dilatory actions by counsel
- g. Dilatory actions by the parties
- h. Backlog of other cases on the Court's docket
- i. Unnecessary discovery
- j. Inefficient discovery
- k. Other reasons (Please specify): \_\_\_\_\_

---

**B. MANAGEMENT OF THIS LITIGATION**

7. "Case Management" refers to active oversight and supervision of litigation by a judge or magistrate judge. This management can take such forms as scheduling orders, close monitoring of motions practice, a requirement of rapid progress to trial, pre-trial conferences, etc.

The amount of case management in this case was: (please circle one):

- a. High
- b. Moderate
- c. Low
- d. Minimal or none

8. If there were no or minimal case management by the Court in this case, were the parties able to manage the litigation in this case effectively without the intervention of the Court?
- a. Yes
  - b. To some extent
  - c. No
  - d. Inapplicable
9. The effectiveness of case management in this case was: (please circle one):
- a. Very effective
  - b. Somewhat effective
  - c. Not effective at all
  - d. Inapplicable
10. The timing of case management in this case was: (please circle one):
- a. Too early
  - b. Appropriate
  - c. Too late
  - d. Inapplicable
11. In your opinion, were there any pre-trial matters involving your client(s) that were not referred to a magistrate judge that should have been referred in order to reduce cost and/or length of time?
- a. Yes  
If yes, please specify: \_\_\_\_\_  
\_\_\_\_\_
  - b. No
  - c. Don't Know
  - d. Inapplicable

13. Do you believe that the length of time of the case would have been reduced by more intervention by the Court?
- a. Yes
  - b. No
  - c. Don't know
14. Do you believe that the cost of the case would have been reduced by more intervention by the Court?
- a. Yes
  - b. No
  - c. Don't know
15. Was this case settled as to your client(s)?
- a. No
  - b. Yes, in part
  - c. Yes, in total

IF YOU ANSWERED (B) OR (C), SKIP TO QUESTION 17.

16. If the case did not settle, was it a case that should have settled as to your client(s)?
- a. No
  - b. Yes
  - c. Yes, in part

If the case could have settled in part or in whole, please explain:

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17. If the case settled, please indicate the factors that precipitated settlement: (Circle all that apply)
- a. Trial date in the near future
  - b. Settlement conference conducted by the Court
  - c. Pre-trial conference
  - d. Other hearing or conference held by the Court
  - e. Cost of continuing to litigate
  - f. Desire to resolve case without further delay
  - g. Recognized that merits of case were such that settlement was appropriate
  - h. Other Please specify: \_\_\_\_\_
18. If the case settled, could it have settled earlier?
- a. Yes
  - b. No
  - c. Inapplicable
19. If the case could have settled earlier, what prevented an earlier settlement?
- \_\_\_\_\_
- \_\_\_\_\_
20. Was an offer of judgment made pursuant to Rule 68 of the Federal Rules of Civil Procedure?
- a. Yes
  - b. No
21. Did you utilize any methods of Alternative Dispute Resolution (ADR) not offered by this Court, such as binding arbitration or non-binding mediation or arbitration?
- a. Yes
  - b. No
  - c. Don't Know
  - d. Not applicable

22. If you utilized ADR techniques, what methods did you use?

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23. If you did not utilize any ADR techniques, did you consider using any?

- a. Yes
- b. No
- c. Don't Know
- d. Not applicable

24. If you considered ADR techniques but did not use them, what ADR techniques did you consider and why were they not utilized?

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25. If you did not consider using any ADR techniques, why not?

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26. If you used any ADR techniques, how did they affect or likely affect the cost and length of time of the case: (Circle either 1, 2, 3, or 4 under (A) and (B))

A. Length of Time

- 1. Increased time/was an inefficient use of time
- 2. Had no effect on time
- 3. Decreased time/expedited matters
- 4. Don't know

B. Costs

- 1. Increased costs
- 2. Had no effect on costs
- 3. Decreased costs
- 4. Don't know

C. DISCOVERY IN THIS CASE

27. Was the amount of discovery that took place in this case as to your client(s), relative to the disputed issues (Circle one):
- a. Excessive
  - b. Appropriate
  - c. Inadequate
  - d. Other (Please specify): \_\_\_\_\_
28. Was the scope of discovery as to your client(s) in relation to the issues in the case:
- a. Too broad
  - b. Appropriate
  - c. Too limited
  - d. Inapplicable
29. Was the length of time for discovery as to your client(s) in this case:
- a. Too long
  - b. Reasonable
  - c. Too short
30. How long did discovery take in your case as to your client(s)?
- \_\_\_\_\_ Months
31. In retrospect, how long should discovery have taken in your case as to your client(s)?
- \_\_\_\_\_ Months

32. If you believe that discovery took too long in this case, please circle all applicable reasons for the length of time of discovery and provide any additional reasons:
- a. The parties took unnecessary discovery
  - b. Insufficient monitoring of discovery by the Court
  - c. Failure to set a sufficiently early discovery cut-off deadline
  - d. The Court did not require adherence to the discovery cut-off date that it initially set
  - e. The Court should have ruled on the request of the party or parties to limit the scope of discovery
  - f. The Court should have limited the scope of discovery sua sponte without any request from the parties
  - g. The Court did not rule promptly on discovery motions
  - h. Insufficient cooperation among the parties
  - i. Insufficient cooperation among the lawyers
  - j. The parties should have attempted to limit discovery either informally or by resort to the Court
  - k. The parties exceeded the discovery deadlines set forth in the Scheduling Order.
  - l. Other reasons. Please specify.
- 

34. Did any discovery disputes involving your client(s) develop in your case?

- a. Yes
- b. No

IF YOU ANSWERED NO, SKIP TO QUESTION 38

35. If discovery disputes developed, were you able to resolve these disputes without resort to the Court?
- a. Yes
  - b. Some were resolved without resort to the Court; some were resolved only after resort to the Court
  - c. No
36. If the parties did not resort to the Court for resolution of all discovery disputes, why not? (Circle all that apply)
- a. Resolved informally
  - b. Resolved after a Local Rule 9(e)(3) conference
  - c. Voluntary compliance with the discovery requests
  - d. Voluntary decision not to insist on compliance with the discovery requests
  - e. Reluctance to take the dispute to the Court because of the additional costs that would be incurred
  - f. Reluctance to take the dispute to the Court because of the additional delay that would occur
  - g. Reluctance to take the dispute to the Court because of the Court's attitude toward discovery
  - h. Reluctance to take the dispute to the Court for other reasons
- Please specify: \_\_\_\_\_
- i. Inapplicable
37. If discovery motions were filed, how did the Court resolve these discovery motions? (Circle all that apply)

- a. Ruled on them in a timely fashion without a hearing
  - b. Ruled on them in a timely fashion at or after a hearing
  - c. Did not rule on them in a timely fashion
  - d. Did not appear to be sympathetic to the discovery issues
  - e. The Court did not resolve the dispute because the parties resolved the dispute themselves after the motion was filed
  - f. Referred the dispute to a Magistrate Judge
  - g. Other. Please specify: \_\_\_\_\_
  - h. Inapplicable
38. Did you engage in any informal means of discovery, such as voluntary exchange of documents without a formal request for production, voluntary exchange of names of experts, witnesses, etc.?
- a. Yes
  - b. No

IF YOU ANSWERED NO, PLEASE SKIP TO QUESTION 42

39. If you engaged in informal means of discovery, please specify:
- \_\_\_\_\_
- \_\_\_\_\_
40. If you engaged in informal means of discovery, how did it affect or likely affect the costs in your case as to your client(s)? (Please circle one)
- a. Increased cost
  - b. Had no effect on cost
  - c. Decreased cost
  - d. Don't know
  - e. Inapplicable
41. If you engaged in informal means of discovery, how did it affect or likely affect the length of the case as to your client(s)? (Please circle one)

- a. Increased the length of time of the case
- b. Had no effect on the length of time of the case
- c. Decreased the length of time of the case
- d. Don't know
- e. Inapplicable

D. TRIAL

PLEASE ANSWER QUESTIONS 42-44 WHETHER OR NOT A TRIAL OCCURRED IN YOUR CASE.

42. Under 28 U.S.C. § 636(c), the parties may consent to proceed before the magistrate judge, who has authority to exercise the same jurisdiction as a district judge, including entry of judgment in the case.

Did you consider consenting to trial before a magistrate judge?

- a. Yes
- b. No
- c. Don't Know
- d. Not applicable

If you answered "No," what would have made consenting to proceed before a magistrate judge more attractive?

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43. Please answer the following question whether or not your case went to trial. If the trial date was rescheduled from the date it was originally set, why was it reset? (Circle all that apply)

- a. The date originally scheduled was unrealistic
- b. All parties sought and were granted one or more continuances
- c. One or more parties sought and was granted one or more continuances, over the objection of one or more other parties
- d. The Court rescheduled the trial date because of a criminal trial
- e. The Court rescheduled the trial date because of another civil trial
- f. The Court rescheduled the trial date for another reason. Please specify: \_\_\_\_\_
- g. The Court rescheduled the trial date but I can't remember why
- h. Other. Please specify: \_\_\_\_\_
- i. Inapplicable

44. Did a trial occur in this case as to your client(s)?

- a. No
- b. Yes, a non-jury trial
- c. Yes, a jury trial

IF YOU ANSWERED NO, SKIP TO QUESTION 50

45. Approximately how many actual days were spent in trial?

\_\_\_\_\_ Days

46. How firmly did the Court control the trial?

- a. Very firmly
- b. Somewhat firmly
- c. Not firmly at all
- d. Don't know

47. If a trial occurred, please comment on whether the manner in which the Court conducted the trial promoted efficient use of time and expenses. (For example, were there trial interruptions, resettings, etc.)

- 
- 
- 
48. If a non-jury trial occurred, based on your experience, was the time it took the Court to issue an opinion: (Circle one)
- a. Excessively long
  - b. Somewhat long
  - c. Reasonable
  - d. Don't know
  - e. Inapplicable
49. If there were post-trial motions, was the time it took the Court to rule on the post-trial motions: (Circle one):
- a. Excessively long
  - b. Somewhat long
  - c. Reasonable
  - d. Don't know
  - e. Inapplicable

**D. COSTS OF THIS LITIGATION**

50. What type of attorney fee arrangement did you have with your client(s) in this case? (Circle one)

- a. Hourly rate
- b. Hourly rate with a maximum
- c. Hourly rate plus a contingency fee
- d. Set fee
- e. Contingency fee
- f. Expectation of statutory attorneys fee only
- g. Government or other salaried attorney
- h. Retainer
- i. Other (Please describe): \_\_\_\_\_

51. Please indicate the costs spent on this case as to your client(s) for the categories listed below. If you are unable to categorize the costs, please indicate the total cost only.

- a. Total cost  
\$ \_\_\_\_\_
- b. Attorneys' Fees \$ \_\_\_\_\_
- c. Outside professionals,  
including expert witnesses,  
consultants and investigators \$ \_\_\_\_\_

52. Based on your experience, were the total litigation fees and costs (including but not limited to attorney's fees) that your client(s) incurred: (Circle one)

- a. Much too high
- b. Slightly too high
- c. About right
- d. Slightly too low
- e. Much too low

53. If you believe that the total litigation costs in this case were too high as to your client(s), please circle each applicable reason for the excessive costs and provide any additional reasons:

- a. Excessive case management by the Court

- b. Inadequate case management by the Court
- c. The Court's failure to rule promptly on motions
- d. Actions by the Court, other than failure to rule promptly on motions.

Please specify: \_\_\_\_\_

- e. Dilatory actions by counsel
  - f. Dilatory actions by the parties
  - g. Backlog of other cases on the Court's docket
  - h. Unnecessary discovery
  - i. Inefficient discovery
  - j. Excessive expert fees
  - k. Excessive attorneys fees
  - j. Other reasons (Please specify)
- 
- 

**E. ATTORNEY PROFILE**

- 54. How long have you been engaged in the active practice of law?
  - a. Less than 5 years
  - b. 5-9 years
  - c. 10-14 years
  - d. 15-19 years
  - e. 20 or more years
  
- 55. How many cases have you had in federal court (either the Middle District of Tennessee or other federal courts)?
  - a. This is the only federal case I've ever been involved in
  - b. Less than 5 federal cases

- c. Between 5-10 federal cases
  - d. Over 10 federal cases
56. Approximately how large was the law firm of which you were a member when you litigated this case?
- a. Solo practice
  - b. Less than 5 lawyers
  - c. 5-9 lawyers
  - d. 10-14 lawyers
  - e. 15-19 lawyers
  - f. 20 or more lawyers
57. How many attorneys in your firm worked to any significant extent on this case?
- 
58. Please add any additional comments about the management of this particular case or about management of litigation in the federal courts generally and in the Middle District of Tennessee specifically, particularly with respect to costs, delay, and suggestions for improvement.

**THANK YOU VERY MUCH FOR YOUR TIME AND ATTENTION**

## **EXHIBIT 3 TO APPENDIX C**

### **REPORT ON DATA ANALYSIS OF QUESTIONNAIRE RESPONSES TO ATTORNEY SURVEY**

#### **A. GENERAL OVERVIEW**

##### **1. Length of Case**

The questionnaire revealed that 25% of the responses indicated that the case at issue had lasted between 6 to 12 months. This was the most common length among all the cases. Only 8% extended beyond 2 years. In addition, 71% of the attorneys thought that the time from filing to disposition for their cases was reasonable. For those attorneys who thought the time from filing to disposition was too long (20%), the most frequently cited reasons were the Court's failure to rule on motions, dilatory actions by counsel, and dilatory actions by the parties.

##### **2. Case Management**

40% of attorneys responding said that the case management by the Court was moderate and 60% found that management to be effective or somewhat effective, with 56% also stating that the timing of that management was appropriate. 26.6% of attorneys reported minimal or no management, but 43% of those found that the parties could manage the case effectively themselves.

Question 12 listed several case management actions taken by the Court. On average, slightly fewer than half the respondents thought the various case management techniques had no effect on cost or delay. The majority of those who felt that there was some effect felt that the actions decreased cost and delay, except for the resetting or the continuance of the trial, which was felt to increase both delay and cost.

While 72% thought that additional Court intervention would not reduce delay, 74% said that Court intervention would reduce cost.

##### **3. Alternative Dispute Resolution**

Only .5% of the respondents had used Alternative Dispute Resolution in their cases, and only 2.3% had considered using ADR.

#### 4. Discovery

The majority of respondents found that both the scope and length of time for discovery was adequate. For those who thought that the discovery process was too long, the most commonly cited reasons were that the parties took unnecessary discovery, that there was insufficient monitoring by the Court, and that there was a failure to set sufficiently early discovery cutoff dates.

Concerning the types of discovery used, 62% used interrogatories and requests for production of documents. 56% utilized depositions of parties, 20% deposed experts, and 39% deposed witnesses. For interrogatories and requests for documents, approximately 1/3 of respondents thought they added time and cost, for party depositions approximately 1/3 thought time was increased and 40% thought that cost was increased. Only 11% thought that expert depositions added time and 15% thought they added costs, but these depositions were not used by at least half of the respondents. 23% responded that witness depositions added time to a case and 30% thought that they added cost. Very few (1% to 4%) thought that the added time or cost for these discovery techniques was excessive, and only 18% reported discovery disputes in the cases at issue. In addition, informal discovery was seen to reduce cost and delay.

#### 5. Trials

33% of the respondents reported their trials had been rescheduled and the most common reasons cited were that all parties sought a continuance, the Court continued the case on its own for other reasons, or that the original date was unrealistic. 10% of the cases went to trial with half jury and half non-jury, the most common length being 1 to 3 days.

#### 6. Attorney Fees

51% of the attorneys responding charged on an hourly rate basis, and 12% on a contingency fee. 65% of the attorneys thought that the costs to their clients were about right. Of the 14% that thought costs were too high, the most commonly cited reasons were excessive expert fees, inadequate case management, dilatory actions by counsel, and the Court's failure to rule promptly.

#### 7. Attorney Information

Of the respondents, 25% of the attorneys have been in practice 10 to 14 years, 22% for 15 to 19 years, and 20% for 20 or more years. 75% of the respondents have had prior federal court experience in more than 10 cases. 34% came from firms with 20 or more attorneys, with 9% in solo practice. Attorneys who practice in Nashville made up 77% of the respondents.

## B. DATA ANALYSIS

The two objective measures of delay contained in the questionnaire were the time from filing to disposition (Question 4) and the length of discovery (Question 33). The objective measures of cost were client total costs (Question 58A), client attorney fees (Question 58B) and client other costs (Question 58C). Correlations were run with these measures and numerous others from the questionnaire. Those correlations showed the following:

### 1. DELAY: TIME FROM FILING TO DISPOSITION (QUESTION 4)

#### **Significant statistical correlation with the time from filing to disposition was found for the following:**

◆The amount of the potential money recovery or liability (Question 2). Though the correlation was not striking, the trend was for cases worth more money to take longer. Fully 1/3 of the cases were valued from \$0 to \$50,000 and almost the same number were from 7 to 12 months in length. These two values were most commonly cited. For those cases longer than 30 months (11%), more than 1/2 had potential recovery or money values of over \$250,000, but it is noteworthy that the rest were valued from \$0 to \$49,000.

◆The timeliness of filing to disposition (Question 5), which was a subjective measure of delay. Although expected, this helps to confirm the validity of the responses.

◆The fact that the trial was reset or continued (Question 12kA). 50% of cases were reset or continued and the ones that were reset generally ended up being much longer. For cases longer than 19 months, 77% to 90% had trials reset or continued. For cases less than 19 months, 55% to 80% did not have trials reset or continued.

◆The length of discovery (Question 33).

◆The occurrence of discovery disputes (Question 37). This was not stark. For shorter cases, 80% to 90% had no discovery disputes, and for longer cases, 60% to 70% had no disputes.

◆Whether a trial occurred (Question 51). It should be noted that these results are based on very small numbers. For shorter cases, 5% to 10% went to trial, for the longest cases, 12% to 41% went to trial.

◆ Total client cost (Question 58A). It also should be noted concerning these figures, that a full 50% of respondents reported that there was no client cost associated with their representation. These might be attributed to government and corporate attorneys.

◆ The number of attorneys on the case (Question 65). Cases with more attorneys lasted longer.

◆ The Judge assigned to the case (Question 66). This correlation was not stark. For Judge Nixon, 27% of his cases lasted from 7 to 12 months; 20% lasted less than 1 month; and 13% lasted 9 to 24 months. For Judge Wiseman, 24% of his cases lasted less than 1 month; 20% lasted 19 to 24 months; and 17% lasted 7 to 12 months. For Judge Higgins, 29% lasted 7 to 12 months; and 29% lasted 13 to 18 months. Of cases that lasted between 31 and 31 months, 50% belonged to Judge Wiseman, 37% belonged to Judge Nixon, and 13% belonged to Judge Higgins. For all cases that lasted more than 36 months, 53% were assigned to Judge Nixon, 30% to Judge Higgins, and 15% to Judge Wiseman.

◆ Use of document requests

◆ Use of party depositions

◆ Use of expert depositions

◆ Use of witness depositions

**No significant correlation with the length of time from filing to disposition was found for the following:**

◆ The amount of case management (Question 8). Very few respondents, however, reported high case management (6.6%), and 28.8% reported minimal or no case management.

◆ The subjective effectiveness of case management (Question 10)

◆ The existence of a Local Rule 11 scheduling order (Question 12aA) (82% reported Rule 11 orders)

◆ That the Court ensured the scheduling order was followed (Question 12bA) (reported 1/2 yes, 1/2 no)

◆ Pre-trial activities were held to a firm schedule (Question 12cA) (reported 1/2 yes, 1/2 no)

- ◆The Court enforced limits on discovery (Question 12dA) (60% no, 40% yes)
- ◆The Court narrowed the issues before trial (Question 12eA) (60% no, 40% yes)
- ◆Prompt ruling on non-dispositive motions (Question 12fA) (30% no, 70% yes)
- ◆Prompt ruling on dispositive motions (Question 12gA) (36% no, 63% yes)
- ◆Rulings on dispositive motions sufficiently in advance of the trial (Question 12hA) (18% no, 67% yes)
- ◆Case referred to ADR (Question 12iA) (71% no, 8% yes)
- ◆Case referred to Magistrate Judge for pre-trial matters (Question 12jA) (54% no, 45% yes)
- ◆Court facilitated settlement discussions or conference (Question 12lA) (65% no, 34% yes)
- ◆The number of depositions was limited by the Court (Question 12mA) (88% no, 11% yes)
- ◆The number of experts was limited by the Court (Question 12nA) (92% no, 7% yes)
- ◆Case was settled (Question 18) (a larger percentage of longer cases were settled than were shorter cases)
- ◆Interrogatories were used (Question 36aA)
- ◆The use of informal discovery (Question 41) (50% used, 50% did not)
- ◆The type of fee arrangement used (Question 57)
- ◆Previous federal court experience (Question 62)
- ◆The size of law firm (Question 63)
- ◆The type of case (Question 68) (although labor cases were somewhat shorter)

2. DELAY: LENGTH OF DISCOVERY IN MONTHS (QUESTION 33)

The length of discovery in months showed a statistically significant correlation with each factor chosen to test. These factors were as follows:

- ◆ subjective length of discovery (too long, too short, etc)
- ◆ the use of discovery interrogatories
- ◆ the use of document requests
- ◆ the use of deposition of parties
- ◆ the use of expert depositions
- ◆ the use of witnesses depositions

In other words, the use of discovery mechanisms occurred in the longer cases, as might be expected.

3. COSTS: CLIENT TOTAL COSTS (QUESTION 58 A)

**Significant statistical correlation with client total cost was found for the following:**

- ◆ Potential money recovery (Question 2)
- ◆ The length of discovery in months (Question 33)
- ◆ Trial rescheduled or continued (Question 46)
- ◆ Previous federal court experience (Question 62) - the more expensive cases were handled by attorneys with more experience
- ◆ The number of attorneys on a case (Question 65)
- ◆ The use of discovery interrogatories (Question 36aA)
- ◆ The use of document requests (Question 36bA)
- ◆ The use of party depositions (Question 36cA)
- ◆ The use of witness depositions (Question 36eA)

**No statistical correlation existed with client total cost for the following:**

- ◆ Other client interests at stake (Question 3)
- ◆ Timeliness from filing to deposition (subjective) (Question 5)
- ◆ The amount of case management (Question 8)
- ◆ The effectiveness of case management (Question 10)
- ◆ The use of a Local Rule 11 scheduling order (Question 12aA)
- ◆ Court insured that the scheduling order was followed (Question 12bA)
- ◆ The Court held pre-trial activities to schedule (Question 12cA)
- ◆ The Court put limits on discovery (Question 12dA)
- ◆ The Court narrowed the issues (Question 12eA)
- ◆ Prompt ruling on non-dispositive motions (Question 12fA)
- ◆ Prompt ruling on dispositive motions (Question 12gA)

- ◆The Court ruled on dispositive motions sufficiently in advance of trial (Question 12hA)
- ◆Case referred to ADR (Question 12iA)
- ◆Case referred to a Magistrate Judge (Question 12jA)
- ◆Case reset or continued (Question 12kA)
- ◆Settlement conference or discussions held (Question 12lA)
- ◆The Court limited the number of depositions (Question 12mA)
- ◆The Court limited the number of experts (Question 12nA)
- ◆Whether the case settled (Question 18)
- ◆Whether discovery disputes arose (Question 37)
- ◆Use of informal discovery (Question 41)
- ◆Whether trial was held (Question 51)
- ◆Type of fee arrangement (Question 57)
- ◆Size of law firm (Question 63)
- ◆Judge (Question 66)
- ◆Type of case (Question 68)
- ◆Use of expert depositions (Question 36dA)

4. COST: CLIENT ATTORNEY FEES (QUESTION 58B)

**A statistically significant correlation existed with client attorney's fees for:**

- ◆Potential money recovery (Question 2)
- ◆Amount of case management (Question 8)
- ◆Referral to ADR (Question 12). Only 8 reported referral to ADR, but these were much cheaper.
- ◆Length of discovery in months (Question 33)
- ◆Whether trial rescheduled (Question 46) (borderline correlation)
- ◆The type of fee arrangement (an hourly rate was more expensive although the only fee that was over \$150,000 was a contingency fee)
- ◆Client total cost (Question 58A)
- ◆The number of attorneys on a case (Question 65)
- ◆The use of interrogatories (Question 36aA)
- ◆The use of document requests (Question 36bA)
- ◆The use of party depositions (Question 36cA)
- ◆The use of witness depositions (Questions 36eA)

No correlation existed with the type of case although cases under categories of "Other" and "Possibly Complex" were more expensive.

**No statistically significant correlation with client attorney fees existed for:**

- ◆Other client interests (Question 3)
- ◆Timeliness (subjective) of filing to disposition (Question 5)

- ◆ Effectiveness of case management (Question 10)
- ◆ The use of Local Rule 11 order (Question 12aA)
- ◆ The Court ensured the scheduling order followed (Question 12bA)
- ◆ Held pre-trial activities to schedule (Question 12cA)
- ◆ The Court put limits on discovery (Question 12dA)
- ◆ The Court narrowed the issues (Question 12eA)
- ◆ Prompt ruling on non-dispositive motions (Question 12fA)
- ◆ Prompt ruling on dispositive motions (Question 12gA)
- ◆ The Court ruled on motions sufficiently in advance of trial (Question 12hA)
- ◆ Case referred to a Magistrate Judge (Question 12jA)
- ◆ Case reset or trial continued (Question 12kA)
- ◆ Settlement conference held (Question 12lA)
- ◆ Court limited number of depositions (Question 12mA)
- ◆ Court limited number of experts (Question 12nA)
- ◆ Case settled (Question 18)
- ◆ Discovery disputes arose (Question 37)
- ◆ Use of informal discovery (Question 41)
- ◆ Trial occurred (Question 51)
- ◆ Previous federal court experience (Question 62)
- ◆ Size of law firm (Question 63)
- ◆ Judge (Question 66)
- ◆ Type of case (Question 68)

5. COSTS: OTHER CLIENT COSTS (QUESTION 58C)

**Statistically significant correlation existed with other client costs for:**

- ◆ Potential money recovery (Question 2)
- ◆ Length of discovery in months (Question 33)
- ◆ Whether discovery disputes arose (Question 37) (It is noteworthy that correlation was where no disputes, client costs were higher.)
- ◆ Trial occurred (Question 51) (numbers so low, probably not significant)
- ◆ Total client costs (Question 58A)
- ◆ Number of attorneys on case (Question 65)
- ◆ Use of interrogatories (Question 36aA)
- ◆ Use of document requests (Question 36bA)
- ◆ Use of party depositions (Question 36cA)
- ◆ Use of expert depositions (Question 36dA)
- ◆ Use of witness depositions (Question 36dA)

**No significant correlation existed with other client costs for:**

- ◆ Existence of other client interests (Question 3)
- ◆ Timeliness (subjective) of filing to disposition (Question 5)

- ◆ Amount of case management (Question 8)
- ◆ Effectiveness of case management (Question 10)
- ◆ Existence of Local Rule 11 order (Question 12aA)
- ◆ Court ensured scheduling order followed (Question 12bA)
- ◆ Court held pre-trial activities to schedule (Question 12cA)
- ◆ Court put limits on discovery (Question 12dA)
- ◆ Court narrowed issues (Question 12eA)
- ◆ Prompt ruling on non-dispositive motions (Question 12fA)
- ◆ Prompt ruling on dispositive motions (Question 12gA)
- ◆ Court ruled on dispositive motions sufficiently in advance of trial (Question 12hA)
- ◆ Case referred to ADR (Question 12iA)
- ◆ Case referred to Magistrate Judge (Question 12jA)
- ◆ Trial reset or continued (Question 12kA)
- ◆ Settlement discussions or conference held (Question 12lA)
- ◆ Court limited number of depositions (Question 12mA)
- ◆ Court limited number of experts (Question 12nA)
- ◆ Case settled (Question 18)
- ◆ Informal discovery used (Question 41)
- ◆ Trial rescheduled (Question 46)
- ◆ Type of fee arrangement (Question 57)
- ◆ Previous federal court experience (Question 62)
- ◆ Size of law firm (Question 63)
- ◆ Judge (Question 66)
- ◆ Type of case (Question 68) (92% of cases had no other costs)

6. PLAINTIFF/DEFENDANT (QUESTION 70)

**A statistical correlation existed between whether the attorney represented a plaintiff or a defendant and:**

- ◆ The amount of discovery (Question 30) (more defendants thought discovery was excessive although the numbers are not large)
- ◆ Size of law firm (Question 63) (defendants tended to come from larger firms)

**No statistical correlation existed between whether the attorney represented a plaintiff or a defendant and:**

- ◆ Timeliness (subjective) from filing to disposition (Question 5)
- ◆ Effective case management (Question 10)
- ◆ Opinion that Court intervention would shorten case (Question 13)
- ◆ Opinion that Court intervention would reduce costs (Question 15)
- ◆ Scope of discovery (Question 31)

- ◆ Length of discovery (Question 32)
- ◆ Cost (subjective) to client (Question 59)
- ◆ Length of practice (Question 61)
- ◆ Previous federal court experience (Question 62)
- ◆ Location of practice (Question 64)

7. Judge (QUESTION 66)

**A statistically significant correlation existed between the Judge assigned to a case and the following:**

- ◆ Whether held pre-trial activities were held to a schedule (Question 12cA). For Judge Wiseman, in 61% of his cases respondents reported no. For Judge Higgins, in 66% of his cases respondents reported yes. For Judge Nixon's cases respondents were divided approximately 1/2 and 1/2.
- ◆ Length of discovery in months (Question 33). Discovery for Judge Higgins' cases tended to be a little longer, but the difference was not stark.
- ◆ Whether the trial occurred (Question 51). Judge Wiseman had more jury trials and more total trials, although the numbers are small.
- ◆ Time to rule on post-trial motions (Question 56). The number is really too small to be significant, but indicated that Judge Nixon may be slightly longer.

**No correlation existed between the Judge assigned to a case and the following:**

- ◆ Subjective timeliness of filing to disposition (Question 5)
- ◆ Amount of case management (Question 8)
- ◆ Use of Local Rule 11 order (Question 12aA)
- ◆ Court ensured scheduling order followed (Question 12bA)
- ◆ Court put limits on discovery (Question 12dA)
- ◆ Court narrowed issues (Question 12eA)
- ◆ Prompt ruling on non-dispositive motions (Question 12fA)
- ◆ Prompt ruling on dispositive motions (Question 12gA)
- ◆ Court intervention would reduce costs (Question 15)
- ◆ Case settled (Question 18)
- ◆ Amount of discovery (Question 30)
- ◆ Scope of discovery (Question 31)
- ◆ Length of discovery (Question 32)
- ◆ Discovery disputes arose (Question 37)
- ◆ Trial rescheduled (Question 46)
- ◆ Would accept another Judge to save time (Question 49)
- ◆ Non-jury opinion time (Question 55)
- ◆ Subjective assessment of cost to client (Question 59)

It should be noted that the presence of a correlation does not mean a cause-and-effect relationship necessarily exists. It is simply an indication that one might exist.

Charts showing statistical correlations for the data analysis of the questionnaire results are on file in the Clerk's office.

**EXHIBIT 4 TO APPENDIX C**

**QUESTIONNAIRE FOR PARTIES IN SAMPLE CIVIL CASES**

The attached questionnaire was distributed to the attorneys who responded to the attorney questionnaire (see Exhibit 3 to Appendix C), with a request that the attorneys forward the questionnaire to their clients.

Although the responses to the questionnaires are on file in the Clerk's office, the respondents were assured confidentiality. Therefore, the individual responses cannot be released.

QUESTIONNAIRE FOR PARTIES IN CIVIL CASES  
CIVIL JUSTICE REFORM ACT ADVISORY GROUP  
FOR THE MIDDLE DISTRICT OF TENNESSEE

Case: \_\_\_\_\_

Number: \_\_\_\_\_

Please return this questionnaire by February 20, 1992, in the enclosed, stamped, self-addressed envelope to Dale Grimes, 2700 First American Center, Nashville, TN 37238. If you have any questions, please call Dale Grimes at (615) 742-6244.

1. Were you a plaintiff or defendant in the case listed on the cover sheet? (circle one)
  - a. Plaintiff
  - b. Defendant
  
2. Please estimate as best you can what you spent on this case for each of the categories listed below. If you are unable to itemize your costs, please indicate the total cost only.
  - a. Your total cost of this case \$ \_\_\_\_\_
  - b. Your attorneys' fees to the attorney(s) representing you \$ \_\_\_\_\_
  - c. Your attorneys' expenses (e.g., copying, postage, travel, fees) \$ \_\_\_\_\_
  - d. Your consultants and investigators \$ \_\_\_\_\_
  - e. Your expert witnesses \$ \_\_\_\_\_
  - f. Your discovery costs, including court reporters, transcripts, production of documents, etc., but not including attorneys' fees \$ \_\_\_\_\_
  - g. Your paralegal fees \$ \_\_\_\_\_
  - h. Costs and/or attorneys fees paid to opposing party \$ \_\_\_\_\_
  - i. Lost wages \$ \_\_\_\_\_
  - j. Other (please describe) \$ \_\_\_\_\_

3. Before or at the beginning of this case, did you alone or jointly with your attorney attempt to assess the costs of pursuing the case through the courts? (circle one)

a. Yes

b. No

4. Were you required to pay any costs and/or attorneys' fees of another party in the case?

a. Yes

If yes, please specify: \_\_\_\_\_

b. No

5. If you were required to pay any costs and/or attorneys' fees of another party in the case, what influence did that have on the course of the litigation?

6. Were the costs of the case (circle one):

(In answering this question, please exclude any costs and/or attorneys' fees that you were required to pay to another party in the case.)

a. More than what you expected

b. What you expected

c. Less than what you expected

d. Didn't know what to expect

7. Often several concerns are involved when parties litigate. Please answer either or both of the following questions about your concerns in this litigation.

- a. The amount of money at stake for me in this case was approximately \_\_\_\_\_.
- b. I had other significant interests at stake, such as injunctive relief, matter of principle, concern about future litigation, possibility of legal precedent of significant consequence, professional reputation: Please specify.

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8. What fee arrangement did you have with your attorney in this case? (circle one)

- a. Hourly rate
- b. Hourly rate with a maximum
- c. Hourly rate plus a contingency fee\*
- d. Set fee
- e. Contingency fee\*
- f. Expectation of statutory attorneys fees
- g. My attorney was a government or other salaried attorney
- h. Retainer
- i. Other (please describe): \_\_\_\_\_

\*A contingency fee is an arrangement through which the attorney's fee is a percentage of your recovery, if any, in the case.

9. In your opinion, did this fee arrangement result in the payment of reasonable fees to your attorney? (Please circle one of the choices below and then briefly explain your answer.)

- a. Yes
- b. No
- c. Don't know

Comments:

10. Do you consider the total costs you incurred in the case to be: (Circle one)

- a. Much too high
- b. Somewhat high
- c. About right
- d. Somewhat low
- e. Much too low

11. If you believe that the cost of this lawsuit was too high, what do you think could or should have been done by any of the following persons to reduce the costs?

- a. Your attorney \_\_\_\_\_
- b. The opposing party's attorney \_\_\_\_\_
- c. Other attorneys in the case \_\_\_\_\_
- d. The judge \_\_\_\_\_
- e. Other persons \_\_\_\_\_

12. Was the time to resolve this case: (circle one)

- a. Much too long
- b. Somewhat long
- c. About right
- d. Somewhat short
- e. Much too short

13. If you believe that it took too long to resolve your case, what could or should have been done by any of the following persons to resolve your case more quickly?

- a. Your attorney \_\_\_\_\_
- b. The opposing party's attorney \_\_\_\_\_
- c. Other attorneys in the case \_\_\_\_\_
- d. The court \_\_\_\_\_
- e. Other persons \_\_\_\_\_

14. If you have been involved as a party in other cases comparable to this one, were your costs in those cases (circle one):

- a. Higher than in this case
- b. About the same as in this case
- c. Lower than in this case
- d. Cases so dissimilar, unable to compare costs

Please also state whether these comparable cases were brought in federal court \_\_\_\_\_ or state court \_\_\_\_\_.

- e. Never been involved in another case
- f. Don't know

15. If you have been involved as a party in other cases comparable to this one, was the time involved in those matters:

- a. Longer than in this case
- b. About the same as in this case
- c. Shorter than in this case
- d. Cases so dissimilar, unable to compare time

Please also state whether these matters were brought in federal court \_\_\_\_\_ or state court \_\_\_\_\_.

- e. Never been involved in another case
- f. Don't know

16. Were you at any time told of the availability of alternative methods of resolving the case, such as voluntary non-binding mediation or arbitration, summary jury trials, or binding arbitration?
  - a. Yes
  - b. No
17. Was an alternative method of resolution such as arbitration, mediation, or summary jury trial used in your case?
  - a. Yes
  - b. No
18. If an alternative method of resolution was used, please state the type of method and describe the results.
19. If an alternative method of resolution was not used, would you have considered submitting this case to a person other than the judge to whom the case was assigned for the purposes of settlement discussion or preliminary factual determination?
  - a. Yes
  - b. No
20. Please add any comments or suggestions regarding the time and cost of litigation in the federal courts.

THANK YOU VERY MUCH FOR YOUR TIME AND ASSISTANCE

**EXHIBIT 5 TO APPENDIX C**

**DOCKET SHEET REVIEW**

Attached is a Docket Sheet Review form that was completed for each of the 180 sample cases.

The Docket Sheet Review forms for the 180 cases are on file in the Clerk's Office.



B. LENGTH OF TIME FOR VARIOUS STAGES OF CASE

1. Date of Filing of Complaint: \_\_\_\_\_

2. Date(s) of Filing Third Party Complaint(s): \_\_\_\_\_

\_\_\_\_\_  
(If none, put N/A)

3. Date(s) of Filing Amended Complaint(s): \_\_\_\_\_

\_\_\_\_\_  
(If none, put N/A)

4. Date of Service of Summons:

(Indicate if summons of complaint, amended complaint, counterclaim and/or third-party complaint)

Def. 1 \_\_\_\_\_

Def. 2 \_\_\_\_\_

Def. 3 \_\_\_\_\_

Def. 4 \_\_\_\_\_

Def. 5 \_\_\_\_\_

Third-Party Def. \_\_\_\_\_

Counter-Def. \_\_\_\_\_

Others \_\_\_\_\_

\_\_\_\_\_

5. Date of filing answer(s):

(Indicate if answer(s) to original complaint, amended complaint(s), counterclaim, cross-claim and/or third-party complaint; use more space for additional defendants, as needed)

Def. 1 \_\_\_\_\_

Def. 2 \_\_\_\_\_

Def. 3 \_\_\_\_\_

Def. 4 \_\_\_\_\_

Def. 5 \_\_\_\_\_

Third-party Def. \_\_\_\_\_

Counter Def. \_\_\_\_\_

Others \_\_\_\_\_

6. List pre-trial motions, by date filed, type of motion, who filed the motion, and disposition date:

a. Dispositive motions:

<u>Type of Mtn</u>	<u>Date Filed</u>	<u>By Whom</u>	<u>Date Decided</u>
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Total number of dispositive motions filed: \_\_\_\_\_  
For each dispositive motion, fill out a Motion Disposition Time Sheet.

b. Discovery motions:

<u>Type of Mtn</u>	<u>Date Filed</u>	<u>By Whom</u>	<u>Date Decided</u>
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Total number of discovery motions filed: \_\_\_\_\_

c. Other Motions:

<u>Type of Mtn</u>	<u>Date Filed</u>	<u>By Whom</u>	<u>Date Decided</u>
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Total number of other motions filed: \_\_\_\_\_

7. Date of filing of offer of judgment: \_\_\_\_\_  
(If none, indicate N/A)

8. Date(s) of any status or pre-trial conferences?  
(If none, indicate N/A; indicate whether status,  
pre-trial conference or another type of conference  
other than one dealing specifically with a motion)

9. Was there a trial scheduled in this case?

\_\_\_\_\_ (Yes/No)

10. If so, list date(s) order or notice entered that set trial date and date trial scheduled or rescheduled:

Date of Order Setting Trial	Date Trial Scheduled or Rescheduled
-----------------------------	-------------------------------------

_____	_____
_____	_____
_____	_____

11. Was it a jury or non-jury trial?

\_\_\_\_\_

12. Was there an actual trial in this case? \_\_\_\_\_

13. On what days was the trial held? \_\_\_\_\_

\_\_\_\_\_

14. Were findings of fact and conclusions of law filed?

\_\_\_\_\_ (Yes/No)

If yes, list date(s): \_\_\_\_\_

15. Were there post-trial motions filed?

\_\_\_\_\_ (Yes/No)

If no, list date(s), type of motion, and who filed what: \_\_\_\_\_

\_\_\_\_\_

C. RULE 11 SCHEDULING ORDERS

1. Date of entry of first Rule 11 Scheduling Order:

\_\_\_\_\_

If no Rule 11 order was entered filed, indicate N/A

2. If a Rule 11 order was entered, list the time periods set forth in the first scheduling order:

a. \_\_\_\_\_ months from entry of Rule 11 order to amend pleadings

b. \_\_\_\_\_ months from entry of Rule 11 order to complete discovery

c. \_\_\_\_\_ months from entry of Rule 11 order to file dispositive motions

d. \_\_\_\_\_ months from entry of Rule 11 order to trial date.

3. Was the original Rule 11 order amended?

If so, indicate the date(s) of entry of any subsequent Rule 11 orders or amendments and the changes in the time periods listed above.

ANY UNUSUAL FEATURES OF CASE:

D. GENERAL NOTES AND COMMENTS

1. Based on your review of the docket sheet, do you believe the time it took to resolve this case was (circle one):

- a. Much too long
- b. Slightly too long
- c. About right
- d. Slightly too short
- e. Much too short

2. Based on your review, list the principal factors that contributed to the length of time it took to dispose of this case (i.e., if it were quickly disposed of, why; if not, what slowed it down)

**EXHIBIT 6 TO APPENDIX C**

**MOTION DISPOSITION TIME FORM**

Attached is the Motion Disposition Time form that was completed for each dispositive motion filed in each of the 180 sample cases.

The completed Motion Disposition Time forms for the dispositive motions filed in the 180 sample cases are on file in the Clerk's Office.

MOTION DISPOSITION TIME

CASE NAME \_\_\_\_\_

CASE NUMBER: \_\_\_\_\_

For each substantive motion, complete this form. Use one form for each motion. If no opposition, response, or order was entered, indicate N/A.

TYPE OF MOTION: \_\_\_\_\_

1. Date motion filed: \_\_\_\_\_

By which party: \_\_\_\_\_

Documents filed in support: \_\_\_\_\_

2. Date(s) response(s) filed: \_\_\_\_\_

By which party: \_\_\_\_\_

Documents filed in support: \_\_\_\_\_

\_\_\_\_\_ Days between 1 & 2  
(Use last response date)

3. Date(s) reply(replies) filed: \_\_\_\_\_

\_\_\_\_\_ Days between 2 & 3  
(Use last reply date)

Documents filed in support: \_\_\_\_\_

4. Date(s) of any subsequent filings: \_\_\_\_\_

By which party: \_\_\_\_\_

Documents filed in support: \_\_\_\_\_

5. Were there any continuances or extensions of time to file response and/or reply:

a. Yes

If yes, indicate at whose behest, for what filing, and for how long

b. No

8. Was this motion referred to the Magistrate Judge? \_\_\_\_\_  
If so:

a. When was referral made: \_\_\_\_\_

b. Did the Magistrate Judge hold any hearings on the motion?

\_\_\_\_\_ (Yes/No)

c. If the Magistrate Judge held any hearings, list dates: \_\_\_\_\_

\_\_\_\_\_ Days between a and c

d. Were any hearings rescheduled?

\_\_\_\_\_ (Yes/No)

If so, indicate the dates the hearings were originally scheduled and the dates to which the hearings were rescheduled.

e. When was Report & Recommendation entered: \_\_\_\_\_

\_\_\_\_\_ Days between a and e

\_\_\_\_\_ Days between c and e

f. When were objections filed: \_\_\_\_\_

g. What documents were filed in support: \_\_\_\_\_

- h. When were responses to objections filed: \_\_\_\_\_
- i. What documents were filed in support: \_\_\_\_\_
- j. When were any subsequent filings related to the R&R filed? \_\_\_\_\_

If no objections, responses, or subsequent papers were filed, indicate N/A

- k. Did the District Judge hold a hearing or hearings on the Report and Recommendation and/or objections?

\_\_\_\_\_ (Yes/No)

If yes, date of hearing(s): \_\_\_\_\_

\_\_\_\_\_ Days between f and k

- l. When did the Court rule on the Report & Recommendation? \_\_\_\_\_

\_\_\_\_\_ Days between k and l

\_\_\_\_\_ Days between a and l

\_\_\_\_\_ Days between l and l

- 5. Aside from any hearings on Reports & Recommendations, did the District Judge hold any hearings on the motion?

- a. Yes

If yes, when? \_\_\_\_\_

- b. No

- 6. If the motion was disposed of by the Court without referral to the Magistrate Judge, list the date the Court entered an order disposing of the motion:

\_\_\_\_\_

\_\_\_\_\_ Days between 5 and 6

\_\_\_\_\_ Days between 1 and 6

## **EXHIBIT 7 TO APPENDIX C**

### **PRISONER LITIGATION SURVEY**

The attached, one-page survey was distributed to parties who are frequently involved in prisoner litigation in this District. Specifically, the survey was mailed to 26 Assistant Tennessee Attorney Generals, six private attorneys who regularly represent state defendants, the Commissioner of the Tennessee Department of Correction, the Regional Administrator for the Tennessee Department of Correction, three attorneys who have represented plaintiffs in prisoner litigation, eight wardens of state correctional institutions, 16 employees of state correctional institutions (primarily health care providers and disciplinary board members), 34 inmates of state correctional institutions who have litigated in this District, 31 sheriffs of local county jails, and 27 county attorneys in this District.

The listing of the individuals to whom surveys were sent, and the questionnaire responses are on file with the Clerk's office.

## QUESTIONNAIRE FOR PRISONER LITIGATION

1. How long should cases take from filing to disposition under circumstances in which the court, all attorneys, and all parties act reasonably and expeditiously?

2. If cases take longer than you believe reasonable, what factors contributed to the delay: excessive or inadequate case management by the court, delaying actions by attorneys or parties, the court's failure to rule promptly on motions, the backlog of cases on the court's calendar, or other reasons.

3. If you think delay is a problem, what suggestions or comments do you have for reducing delay?

4. If you believe the costs associated with prisoner litigation in this district are too high, what suggestions or comments do you have for reducing those costs? For example, could § 1915(d) frivolity hearings be scheduled differently so as to reduce the costs for transporting prisoners?

5. Please feel free to make any other comments and/or recommendations you feel should be addressed.

Attach additional sheets if more space is needed.

**EXHIBIT 8 TO APPENDIX C**

**TIME SPENT IN COURT ON CRIMINAL AND CIVIL TRIALS  
AND OTHER PROCEEDINGS**

**During Calendar Years 1985 through 1992**

The attached charts reflect the time spent in court on criminal and civil trials and other criminal and civil proceedings during the years 1985 through 1992. The first chart shows the in-court time for all active District Judges during the study period. The following charts show the in-court time for each active District Judge.

The underlying data, including the time spent in court on criminal jury and non-jury trials, on civil jury and non-jury trials, and on other, non-jury criminal and civil proceedings, as well as the time spent in for each criminal plea and sentencing hearing not subject to the Sentencing Guidelines and for each criminal plea and sentencing hearing subject to the Sentencing Guidelines, for each year and for each active District Judge are on file in the Clerk's Office.

**IN-COURT TIME  
1985 - 1992**

<b>RECAP FOR ALL JUDGES</b>								
<b>Year</b>	<b>Criminal Hours</b>				<b>Civil Hours</b>			<b>Total Hours</b>
	Trial	Plea/ Sentencing Hearings	Other	Total	Trial	Other	Total	Administrative Time Included
1985	335.5	220.7	92.4	649.6	976.6	845.7	1822.4	2486.0
1986	146.7	209.1	147.5*	503.2	856.8	743.1	1545.5	2062.0
1987	374.5*	186.2	116.8*	623.0	820.4	315.2	1135.6	1828.0
1988	178.0	292.4	132.1	602.5	870.7	367.6	1227.2	1839.5
1989	475.8	287.5	117.9	881.2	766.9	502.1	1269.0	2163.0
1990	435.7	278.1	154.6	868.4	593.2	384.8	978.0	1855.5
1991	584.3	341.1	157.2	1082.5	527.5	481.4	1008.9	2106.5
1992**	709.0	268.7	186.2	1163.9	692.3	533.5	1225.7	2408.0

\* Includes 39.33 Other Criminal hours in 1986, and 157.5 Trial hours and 10.0 Other Criminal hours in 1987 for Judge Higgins in the Eastern District of Tennessee

\*\* Includes Judge Echols' total time from April 20, 1992

**JUDGE NIXON'S IN-COURT TIME  
1985 - 1992**

Year	Criminal Hours				Civil Hours			Total Hours
	Trial	Plea/ Sentencing Hearings	Other	Total	Trial	Other	Total	Administrative Time Included
1985	60.33	38.93	19.63	118.89	236.15	188.03	424.18	545.00
1986	98.67	59.07	32.81	190.55	212.41	170.99	383.40	577.50
1987	142.00	76.84	46.05	264.89	215.92	120.36	336.28	602.50
1988	33.00	57.82	33.37	124.19	312.00	89.04	390.04	518.00
1989	174.16	54.61	31.88	260.65	350.50	118.92	469.42	734.00
1990	86.50	59.17	23.80	169.47	308.00	117.75	425.75	597.00
1991	208.33	87.04	28.77	324.14	90.95	131.17	222.12	551.50
1992	361.50	65.47	30.38	457.35	131.50	96.32	227.82	692.50

**JUDGE WISEMAN'S IN-COURT TIME  
1985 - 1992**

Year	Criminal Hours				Civil Hours			Total Hours
	Trial	Plea/ Sentencing Hearings	Other	Total	Trial	Other	Total	Administrative Time Included
1985	52.00	60.82	19.87	132.69	246.50	189.12	435.62	574.00
1986	0	75.66	40.94	116.60	291.00	134.65	425.65	546.50
1987	54.50	62.25	24.75	87.00	275.50	139.59	415.09	565.50
1988	100.45	63.68	34.45	198.58	273.33	165.14	438.47	641.50
1989	88.50	57.99	17.73	164.22	208.50	151.96	360.46	529.50
1990	78.57	90.16	31.98	200.71	175.25	95.29	270.54	474.00
1991	153.58	76.69	40.48	270.75	99.50	165.19	264.69	539.50
1992	149.00	69.99	35.06	254.05	157.50	130.15	287.65	544.50

**JUDGE HIGGINS' IN-COURT TIME  
1985 - 1992**

Year	Criminal Hours				Civil Hours			Total Hours
	Trial	Plea/ Sentencing Hearings	Other	Total	Trial	Other	Total	Administrative Time Included
1985	223.16	120.92	52.94	397.02	493.99	468.59	962.58	1367.00
1986	48.00	74.34	73.74*	196.08	353.42	383.00	736.42	938.00
1987	178.00**	47.08	46.00*	271.08	329.00	55.24	384.24	660.00
1988	44.50	170.91	64.28	279.69	285.33	113.38	398.71	680.50
1989	213.17	174.89	68.27	456.33	207.91	231.23	439.14	899.50
1990	270.67	128.73	98.78	498.18	109.91	171.77	281.68	784.50
1991	222.34	177.40	87.90	487.64	337.00	185.07	522.07	1015.50
1992	178.00	117.00	115.72	410.72	112.33	190.68	303.01	720.50

\* Includes 39.33 hours in Eastern District of Tennessee in 1986  
 Includes 10.0 hours in Eastern District of Tennessee in 1987

**JUDGE ECHOLS' IN-COURT TIME  
1992**

Year	Criminal Hours				Civil Hours			Total Hours
	Trial	Plea/ Sentencings Hearings	Other	Total	Trial	Other	Total	Administrative Time Included
From April 20, 1992								
1992	20.50	16.25	5.08	41.83	291.00	116.26	407.26	450.50

## **EXHIBIT 9 TO APPENDIX C**

### **DISPOSITIVE MOTIONS PENDING IN CIVIL NON-PRISONER CASES**

**As of June 19, 1992**

The attached charts reflect the dispositive motions pending, as of June 19, 1992, in civil, non-prisoner cases. The date of June 19, 1992, was arbitrarily chosen; it has no particular meaning other than the date the report was completed.

There are three separate charts attached listing pending dispositive motions in cases assigned to Judge Nixon, Judge Wiseman, and Judge Higgins. The cases transferred to Judge Echols after April 20, 1992, are noted with an asterisk (\*). A similar chart was compiled for dispositive motions pending before Judge Echols as of June 19, 1992. It is on file in the Clerk's Office. It is not included in this Exhibit since all motions pending before Judge Echols are listed on the other charts.

For the purposes of this study, dispositive motions include pre-trial dispositive motions, specifically motions for full or partial summary judgment, motions to dismiss, motions for judgment on the pleadings, motions to transfer to another district, motions to remand, motions for entry of judgment, motions to reconsider prior rulings on dispositive motions, motions for default judgment under Rule 54(b)(2), motions for preliminary injunction, and motions to reconsider prior rulings on dispositive motions. In addition to the type of motion, the charts include the date the motion was filed, whether it was pending over six months as of June 19, 1992, whether the District Judge referred the motion to a Magistrate Judge and, if so, whether the motion was pending before the Magistrate Judge as of June 19, 1992, or whether the Magistrate Judge had previously entered a Report and Recommendation on that motion. The charts do not reflect any referrals to Magistrate Judges made by order entered after June 19, 1992. The few circumstances in which the reference to a Magistrate Judge was withdrawn prior to entry of a Report and Recommendation are specifically indicated by the notation "W/drn." In addition, the charts reflect all trial dates scheduled by order entered prior to June 19, 1992. Any trial dates scheduled by order entered after June 19, 1992, are not reflected on the attached charts.

**JUDGE NIXON'S  
DISPOSITIVE MOTIONS PENDING IN CIVIL, NON-PRISONER CASES  
AS OF JUNE 19, 1992**

Case Name & Number	Type of Motion	Date Filed	Pending over 6 months	Pending before Magistrate Judge on Referral	Previously Referred to Magistrate Judge; R&R entered	Scheduled Trial Date(s)
Ram's v. Crabtree, 1:91-0122	Default Judgment	4/7/92				
Cole v. Melsungen, 3:86-0748	Dismiss	7/18/91	X	X		11-28-88 10-2-90 4-9-91
Stevenson v. Forte, 3:88-0046 (Case closed on appeal 3/10/89; reopened 6-5-90)	Dismiss or Summary Judgment	6/10/88	X		X	2-6-89 3-12-91 3/12/91
Elmore v. Murfreesboro, 3:88-0824*	Summary Judgment Summary Judgment	12/16/91 12/16/91	X X	X X		7/24/90 2/18/92 11/10/92

Case Name & Number	Type of Motion	Date Filed	Pending over 6 months	Pending before Magistrate Judge on Referral	Previously Referred to Magistrate Judge; R&R entered	Scheduled Trial Date(s)
Roots v. Creighton, 3:88-0419	Dismiss Dismiss Dismiss Dismiss Dismiss Dismiss Strike or Dismiss Dismiss Partial Summary Judgment Partial Summary Judgment	9/25/91 10/1/91 10/11/91 10/15/91 10/15/91 10/15/91 11/26/91 1/15/92 2/3/92 2/3/92	X X X X X X X		X X X X X X X X X X	9-17-91 4/7/92
Sadler v. DuPont, 3:88-0859 (Case closed 3-8-89; reopened 10-23-90; closed 1-31-91; reopened 3-13-91)	Summary Judgment	10/7/91	X			10-18-91 8/25/92
Mosley v. Smith, 3:89-0641*	Reconsider ruling on motion to dismiss Reconsider ruling on motion to dismiss	6/9/92 6/15/92				1/14/92 4/7/92 6/23/92
Gaarder v. State Farm, 3:89-0716*	Dismiss	5/7/92	X	X		5/19/92

Case Name & Number	Type of Motion	Date Filed	Pending over 6 months	Pending before Magistrate Judge on Referral	Previously Referred to Magistrate Judge; R&R entered	Scheduled Trial Date(s)
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Kendall v. Clarksville, 3:89-0726*	Partial Summary Judgment	1/27/92			X	1/23/91 2/25/92
Powell v. Magic Chef, 3:89-0991	Summary Judgment	3/14/91	X		W/drn	5/7/91
Vogt v. Emerson, 3:89-1008*	Partial Summary Judgment	12/31/90	X		X	6/23/92
	Partial Summary Judgment	1/17/91	X		X	7/21/92
Perm Gen v. Seneca, 3:90-0112*	Dismiss	9/3/91	X		X	
	Dismiss	9/16/91	X		X	
	Dismiss	9/16/91	X		X	
	Dismiss	9/16/91	X		X	
	Dismiss	9/16/91	X		X	
Gardner v. Haston, 3:90-0139*	Dismiss	2/15/91	X		X	10/16/92
	Partial Summary Judgment	3/6/91	X	X		
	Summary Judgment	3/26/91	X	X		

Case Name & Number	Type of Motion	Date Filed	Pending over 6 months	Pending before Magistrate Judge on Referral	Previously Referred to Magistrate Judge; R&R entered	Scheduled Trial Date(s)
Greenhill v. Ryder, 3:90-0309	Summary Judgment	4/6/92				3/5/91 8/30/91 12/10/91 10/3/92 10/13/92
Cole v. White House, 3:90-0424	Dismiss or Summary Judgment	6/12/92		X		9/3/91 2/18/92 9/1/92
Cherokee v. Blanch, 3:90-0581*	Summary Judgment Summary Judgment	3/18/91 9/30/91	X		X X	6/25/91 3/3/92 8/18/92
W&G v. Pendaflex, 3:90-0662*	Renew Motion for Preliminary Injunction Summary Judgment	4/23/92 5/14/92		X X		
Beach v. Derwinski, 3:90-0750*	Dismiss	12/31/91		X		4/14/92 7/14/92

Case Name & Number	Type of Motion	Date Filed	Pending over 6 months	Pending before Magistrate Judge on Referral	Previously Referred to Magistrate Judge; R&R entered	Scheduled Trial Date(s)
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TN Farmers v. Smith, 3:90-0765	Summary Judgment	10/31/91	X		X	1/21/92 4/6/92
Shelby v. Delta, 3:90-0945*	Summary Judgment	7/29/91	X		X	9/10/91 4/21/92 6/16/92
Gant v. Arcata, 3:90-1005	Summary Judgment	5/13/92		X		
Dixon v. Allstate, 3:90-1047	Partial Summary Judgment	7/1/91	X		X	10/15/91
	Summary Judgment	7/1/91	X		X	12/15/92
Hodges v. WSM, 3:90-1101*	Dismiss	2/11/91	X		X	
Hitson v. Kerr, 3:91-0052	Partial Summary Judgment	7/3/91	X		X	8/4/92
Miles v. TVA, 3:91-0056*	Summary Judgment	11/1/91	X			3/16/92
Bass v. Janney, 3:91-0097*	Partial Summary Judgment	11/27/91	X	X		2/21/92
	Partial Summary Judgment	12/17/91	X	X		9/29/92
Inter-City v. Monarch, 3:91-0155*	Partial Summary Judgment	12/13/91	X		X	
	Summary Judgment	12/16/91	X		X	

Case Name & Number	Type of Motion	Date Filed	Pending over 6 months	Pending before Magistrate Judge on Referral	Previously Referred to Magistrate Judge; R&R entered	Scheduled Trial Date(s)
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Tibbs v. Metro, 3:91-0288*	Dismiss	6/21/91	X		X	7/7/92
	Dismiss	6/21/91	X		X	
Beck v. Berry, 3:91-0342	Summary Judgment	11/15/91	X	X		2/18/92
Robinson v. Briggs, 3:91-0359*	Partial Summary Judgment	6/15/92 6/19/92		X X		7/7/92
Glavin v. Champlain, 3:91-0402	Summary Judgment	5/22/92				6/23/92
Steele v. Metro, 3:91-0421	Summary Judgment	8/20/91	X		X	2/25/92 12/1/92
Palaez v. Donnelly, 3:91-0467	Dismiss	1/31/92				
Alexander v. Third, 3:91-0490*	Dismiss	7/16/91	X		X	10/6/92
Digital v. Computer, 3:91-0507*	Dismiss Dismiss	8/9/91 8/15/91	X X		X X	5/19/92 10/13/92
Williamson Co. v. FIC, 3:91-0566	Summary Judgment	12/11/91	X	X		
Moore v. Clarksville, 3:91-0599*	Dismiss or Summary Judgment	5/15/92				8/11/92

Case Name & Number	Type of Motion	Date Filed	Pending over 6 months	Pending before Magistrate Judge on Referral	Previously Referred to Magistrate Judge; R&R entered	Scheduled Trial Date(s)
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Sanders v. Nash. Bridge, 3:91-0747*	Summary Judgment	2/10/92			X	3/16/92
Whitaker v. Rowe, 3:91-0832*	Dismiss	3/25/92			X	
Oldham v. Heilig-Meyers, 3:91-0848	Summary Judgment	5/29/92		X		
TN Wholesale v. General Hospital, 3:91-0853*	Dismiss or transfer Dismiss or transfer Transfer Dismiss	11/14/91 2/24/92 2/24/92 2/24/92	X			
Brizendine v. Inter-City, 3:91-0898*	Summary Judgment	3/2/92		X		
Rainer v. Westinghouse, 3:91-0934*	Dismiss Dismiss or Summary Judgment	1/7/92 2/10/92		X X		
USA v. Clifton, 3:91-0940	Summary Judgment Summary Judgment	5/12/92 6/15/92				
Lawrence v. White, 3:91-0940	Summary Judgment	5/8/92				
Scarborough v. Amalgamated, 3:91-1012	Summary Judgment	5/7/92				

Judge Nixon --  
Dispositive Motions

Case Name & Number	Type of Motion	Date Filed	Pending over 6 months	Pending before Magistrate Judge on Referral	Previously Referred to Magistrate Judge; R&R entered	Scheduled Trial Date(s)
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RTC v. Anderson, 3:91-1014*	Summary Judgment	6/9/92				8/17/92
Lattimore v. Hunter, 3:91-1015	Summary Judgment Summary Judgment	5/13/92 5/13/92				12/8/92 2/2/93
Ware v. Federal Express, 3:91-1048	Dismiss	2/5/92			X	
Moss v. Investors, 3:91-1053*	Summary Judgment	5/15/92				
Brewster v. White, 3:91-1066	Dismiss or Summary Judgment Dismiss or Summary Judgment	3/12/92 4/3/92				
Atolagbe v. Cracker Barrel, 3:92-0011	Summary Judgment	4/13/92		X		6/22/92
Johnston v. Weintraub, 3:92-0095	Judgment on the Pleadings	4/17/92		CM		
Comdata v. Akel, 3:92-0130	Dismiss or Transfer	3/31/92				
Sea Ins. v. Home Savings, 3:92-0143	Remand	3/23/92				
Benson & Siman v. Ham, 3:92-0173	Dismiss Dismiss	3/16/92 4/13/92			X X	

Judge Nixon --  
Dispositive Motions

Case Name & Number	Type of Motion	Date Filed	Pending over 6 months	Pending before Magistrate Judge on Referral	Previously Referred to Magistrate Judge; R&R entered	Scheduled Trial Date(s)
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Durham v. Sanson, 3:92-0185	Summary Judgment	6/8/92				
RP v. Commercial Ins., 3:92-0186	Dismiss or Transfer	4/8/92		CM		
McCreary v. RTC, 3:92-0258*	Dismiss	5/15/92				
Elkin v. Cardwell, 3:92-0290	Dismiss	5/5/92				
Elrod v. USA, 3:92-0301*	Dismiss Remand	4/20/92 5/4/92				
Dredge v. Burnham, 3:92-0377	Dismiss	6/5/92				
Ingram v. Ansbacher, 3:92-0473	Dismiss or Transfer	6/4/92				

**LEGEND:**

- \*** Case reassigned to Judge Echols after 3/30/92
- W/drn** Referral to Magistrate Judge withdrawn before entry of a Report & Recommendation
- CM** Case referred to Magistrate Judge for case management under experimental program; dispositive motion not before Magistrate Judge

**JUDGE WISEMAN'S  
DISPOSITIVE MOTIONS PENDING IN CIVIL, NON-PRISONER CASES  
AS OF JUNE 19, 1992**

Case Name & Number	Type of Motion	Date Filed	Pending over 6 months	Pending before Magistrate Judge on Referral	Previously Referred to Magistrate Judge; R&R entered	Scheduled Trial Date(s)
Hines v. Freightliner, 3:84-0514* (Case closed 8/18/88; reopened 10/12/88)	Dismiss Partial Summary Judgment Partial Summary Judgment Summary Judgment Partial Summary Judgment Dismiss	4/12/91 5/28/91 5/82/91 5/28/91 6/12/91 6/19/91	X X X X X X			6/5/89 5/21/91 7/23/91
Wafford v. USPS, 3:88-0800	Dismiss	6/12/92				
MacDonald v. GM, 3:88-0993	Partial Summary Judgment	3/4/92				11/13/90 7/30/91 9/3/91 10/15/91 3/24/92 7/7/92
Smith v. Auto Convoy, 3:89-0141*	Summary Judgment	3/27/91	X			8/8/89

Case Name & Number	Type of Motion	Date Filed	Pending over 6 months	Pending before Magistrate Judge on Referral	Previously Referred to Magistrate Judge; R&R entered	Scheduled Trial Date(s)
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Fultz v. Gilliam, 3:89-0650	Dismiss	5/18/92				7/10/90 10/23/90 6/23/92 7/28/92
Jordon v. Roadway, 3:89-0697*	Summary Judgment	2/10/92		X		
Owens v. USA, 3:90-0148* (Case closed 11/6/90; reopened 11/7/91)	Dismiss	5/15/92				6/30/92
Southall v. Allen, 3:90-0264*	Summary Judgment	6/1/92				10/22/91 1/28/92 6/30/92 9/15/92
Pepper Patch v. Campbell, 3:90-0776*	Summary Judgment	11/5/91	X			
Paris Tool v. Alro, 3:90-0832*	Summary Judgment	3/31/92				5/5/92 10/20/92

Judge Wiseman --  
Dispositive Motions

Case Name & Number	Type of Motion	Date Filed	Pending over 6 months	Pending before Magistrate Judge on Referral	Previously Referred to Magistrate Judge; R&R entered	Scheduled Trial Date(s)
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Sebastian v. TDHS, 3:90-0871	Dismiss or Summary Judgment Summary Judgment	10/25/91 11/22/91	X X			12/3/91
Lefevres v. Tree, 3:90-0902*	Summary Judgment & Renewed Mtn for Partial Summary Judgment	10/31/91	X			7/2/91 11/26/91 8/25/92
Mello v. USA, 3:90-0927	Summary Judgment Partial Summary Judgment	7/12/91 8/5/91	X X			
McReynolds v. Wyatt, 3:91-0090	Summary Judgment	4/21/92				11/17/92
Justice v. Metro, 3:91-0111	Partial Summary Judgment Dismiss or Summary Judgment	7/9/91 8/14/91	X X			1/21/92
Peck v. Stewart, 3:91-0112*	Dismiss or for Summary Judgment	10/11/91	X			2/4/92 7/7/92
Package Exp. v. Brumley, 3:91-0188*	Default Judgment	11/12/91	X			

Judge Wiseman --  
Dispositive Motions

Case Name & Number	Type of Motion	Date Filed	Pending over 6 months	Pending before Magistrate Judge on Referral	Previously Referred to Magistrate Judge; R&R entered	Scheduled Trial Date(s)
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Hazard v. Sullivan, 3:91-0193	Summary Judgment Summary Judgment Summary Judgment	5/26/92 5/26/92 5/26/92				
Charlotte v. Hartford, 3:91-0263*	Summary Judgment Summary Judgment	2/3/92 2/27/92				4/7/92 9/1/92
Cowell v. DuPont, 3:91-0268	Summary Judgment	5/26/92				4/14/92
Purser v. LABR, 3:91-0274	Summary Judgment Summary Judgment	2/3/92 2/3/92				3/17/92 6/30/92
Bank South v. Nashville Auto, 3:91-0283	Partial Summary Judgment Summary Judgment Summary Judgment	4/27/92 6/8/92 6/12/92				3/3/03 6/30/92 1/5/93
Smith v. Hailey, 3:91-0350*	Summary Judgment Summary Judgment	11/19/91 11/19/91	X X			
Old Republic v. East-West Motor, 3:91-0382*	Partial Summary Judgment	6/15/92				

Judge Wiseman --  
Dispositive Motions

Case Name & Number	Type of Motion	Date Filed	Pending over 6 months	Pending before Magistrate Judge on Referral	Previously Referred to Magistrate Judge; R&R entered	Scheduled Trial Date(s)
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Jones v. DEA, 3:91-0520	Dismiss or Summary Judgment Summary Judgment	11/22/91 2/19/92				
Adelmann v. DuPont, 3:91-0555	Summary Judgment	2/28/92				
Amos v. St. University, 3:91-0591	Summary Judgment Summary Judgment	3/13/92 4/30/92				
Knight v. USA, 3:91-0617*	Summary Judgment Summary Judgment	5/28/92 6/19/93				
King v. Sun Chemical, 3:91-0714*	Summary Judgment	4/21/91		X		7/27/92
Sharp v. Allstate, 3:91-0715	Dismiss or Summary Judgment	10/31/91	X			
LL Bean v. Huddleston, 3:91-0817	Dismiss	10/24/91	X			
Wilson v. GAF, 3:91-0903	Summary Judgment	6/4/92				
Cleopatra's v. Bredeesen, 3:91-0944	Summary Judgment	4/2/92				11/24/92

Case Name & Number	Type of Motion	Date Filed	Pending over 6 months	Pending before Magistrate Judge on Referral	Previously Referred to Magistrate Judge; R&R entered	Scheduled Trial Date(s)
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Bateson v. Shookoff, 3:91-1030	Dismiss Dismiss or Summary Judgment Dismiss Dismiss or Summary Judgment	1/15/92 1/23/92 1/23/92 2/13/92		X X X X		
Miller v. Aratex, 3:92-0109*	Dismiss or Summary Judgment	5/13/92				
Third National v. Hallwood, 3:92-0114*	Dismiss	4/21/92				
Comcare v. Metro, 3:92-0231	Preliminary Injunction	3/9/92				
Kirkwood v. Musselwhite, 3:92-0257	Dismiss Dismiss	5/29/92 5/29/92				
Service Mdse v. American Software, 3:92-0351	Dismiss or Transfer	5/11/92				
Home Tech v. Swift, 3:92-0482	Dismiss or Stay Proceedings	5/27/92				

**LEGEND:**

- \* Case reassigned to Judge Echols between 4/20/93 and 6/19/93

**JUDGE HIGGINS'**  
**DISPOSITIVE MOTIONS PENDING IN CIVIL, NON-PRISONER CASES**  
**AS OF JUNE 19, 1992**

<b>Case Name &amp; Number</b>	<b>Type of Motion</b>	<b>Date Filed</b>	<b>Pending over 6 months</b>	<b>Pending before Magistrate Judge on Referral</b>	<b>Previously Referred to Magistrate Judge; R&amp;R entered</b>	<b>Scheduled Trial Date(s)</b>
Barron v. Pedigo, 1:90-0109	Partial Summary Judgment	7/19/91	X			3/18/91
	Partial Summary Judgment	9/27/91	X	X		10/21/91
JD Industries v. Faber, 1:90-0132	Summary Judgment	8/30/91	X	X		10/21/91
Ashbury v. Honda, 1:91-0097	Dismiss	4/23/92		X		10/19/92
Ramsey v. Saturn, 1:91-0015	Summary Judgment	5/29/92				10/19/92
Teledyne v. Metric, 1:91-0033	Preliminary Injunction	6/12/92				10/19/92
Burkhead v. USA, 1:91-0038	Dismiss	4/29/92				10/19/92
Cook v. Teledyne, 1:91-0050	Summary Judgment	6/1/92				7/21/92
Johns v. Neese, 1:91-0052	Summary Judgment	6/10/91	X	X		

Case Name & Number	Type of Motion	Date Filed	Pending over 6 months	Pending before Magistrate Judge on Referral	Previously Referred to Magistrate Judge; R&R entered	Scheduled Trial Date(s)
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Motev v. Bryan, 1:91-0070	Summary Judgment Partial Summary Judgment Summary Judgment Partial Summary Judgment	5/1/92 5/1/92 5/1/92 5/1/92		X X X X		6/16/92 12/8/92
Brown v. Lawrenceburg, 1:91-0103	Dismiss or Summary Judgment Partial Summary Judgment	11/7/91 2/14/92	X	X X		
Mohiuddin v. TDOHS, 1:91-0104	Dismiss or Summary Judgment	11/14/91	X	X		
Brizendine v. Faber, 1:91-0116	Summary Judgment Summary Judgment	2/6/92 2/26/92		X X		10/19/92
McClarn v. Jackman, 1:91-0138	Dismiss	12/23/91	X	X		
McMullin v. Hyster, 1:91-0111	Summary Judgment	5/29/92				7/21/92
USA v. Cooper, 1:91-0133	Dismiss	12/16/91	X		X	
Akins v. ICI, 1:91-0134	Dismiss or Summary Judgment Voluntary Dismissal	2/14/92 4/7/92				12/1/92

Case Name & Number	Type of Motion	Date Filed	Pending over 6 months	Pending before Magistrate Judge on Referral	Previously Referred to Magistrate Judge; R&R entered	Scheduled Trial Date(s)
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Southland v. Scrap Metal, 1:92-0029	Dismiss or Abate Remand	3/25/92 4/9/92		X X		
Doe v. Lewisburg, 1:92-0030	Remand Dismiss	4/27/92 5/21/92				
McInnis v. Merrill Lynch, 3:87-0062	Dismiss	10/28/91	X			8/6/90 8/6/91 9/23/91
Hendersonville Condo v. FDIC, 3:87-0097	Reconsider ruling on mtn for part. SJ Reconsider ruling on mtn for part. SJ Reconsider ruling on mtn for part. SJ	8/5/91 8/12/91 8/22/91	X X X		W/drn W/drn W/drn	2/1/88 9/26/88 4/24/89 4/24/90 10/16/90 11/27/90
Maxwell v. Healthamerica, 3:87-0599 (Case closed 7/26/89; reopened 1/10/92)	Dismiss or Summary Judgment Partial Summary Judgment Dismiss	9/29/87 3/2/88 2/22/92	X X		W/drn W/drn	

Case Name & Number	Type of Motion	Date Filed	Pending over 6 months	Pending before Magistrate Judge on Referral	Previously Referred to Magistrate Judge; R&R entered	Scheduled Trial Date(s)
Seaberry-Ross v. TDOC, 3:88-0880 (Case closed 9/15/89; reopened 11/13/89; closed 3/27/90; reopened 11/26/90)	Dismiss or Summary Judgment	1/5/90	X		X	10/2/89 3/27/90
Stephenson v. Forum, 3:88-0916	Summary Judgment Summary Judgment Summary Judgment	3/1/91 3/1/91 4/9/91	X X X		X X X	2/26/90 4/23/91
Martin v. Carell, 3:88-1097	Partial Summary Judgment Summary Judgment Partial Summary Judgment Summary Judgment Partial Summary Judgment Partial Summary Judgment Summary Judgment	12/13/89 3/15/90 3/15/90 3/15/90 3/15/90 3/15/90 4/15/91	X X X X X X X		X X  X X X	3/12/90 6/5/90
Clay Manor v. Luna, 3-89-0608*	Dismiss Partial Summary Judgment	10/9/90 10/18/90	X X			1/29/91

Case Name & Number	Type of Motion	Date Filed	Pending over 6 months	Pending before Magistrate Judge on Referral	Previously Referred to Magistrate Judge; R&R entered	Scheduled Trial Date(s)
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Hayes v. Metro, 3:89-0653	Summary Judgment Dismiss or Summary Judgment	3/15/90 3/13/90	X X		X X	4/17/90
Lewellen v. Metro, 3:89-0735 (Case closed '1/6/92; reopened 3/27/92)	Summary Judgment	5/3/91	X		X	4/16/91 6/14/91
Jennings v. Aero, 3:89-0746	Dismiss or Summary Judgment	6/15/90	X	X		
Southland v. Paracelsus, 3:89-0877	Dismiss or Summary Judgment	10/25/91	X			4/9/91
Lagatta v. Malone & Hyde, 3:89-1020	Summary Judgment	5/26/92				8/6/91
Moore v. Cleckner, 3:90-0007	Summary Judgment Partial Summary Judgment Summary Judgment	10/4/90 10/11/90 10/29/90	X X X		X X X	11/13/90 5/28/91
Outdoor Com v. Murfreesboro, 3:90-04231*	Summary Judgment Summary Judgment	4/30/91 9/9/91	X X	X X		11/17/90 7/30/91

Case Name & Number	Type of Motion	Date Filed	Pending over 6 months	Pending before Magistrate Judge on Referral	Previously Referred to Magistrate Judge; R&R entered	Scheduled Trial Date(s)
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Doe v. Williamson Co., 3:90-0448*	Summary Judgment Summary Judgment	12/14/90 2/15/91	X X			4/23/91
Fleming v. Trimble, 3:90-0512	Transfer Summary Judgment Summary Judgment	7/18/90 8/13/90 1/23/91	X X X	X X X		
Hall v. USA, 3:90-0716	Partial Summary Judgment Partial Summary Judgment	2/8/91 3/20/92	X		X	
Neathery v. Eastland, 3:90-0738	Dismiss or Partial Summary Judgment	8/1/91	X	X		11/12/91
Chance v. IBT, 3:90-0920	Summary Judgment	7/11/91			X	1/14/92
Webster v. Nelson, 3:90-0966	Summary Judgment Summary Judgment Partial Summary Judgment	6/28/91 7/1/91 7/1/91	X X X		X X X	9/17/91
First TN v. Fin. News, 3:90-0971*	Summary Judgment	12/3/90	X	X		

Case Name & Number	Type of Motion	Date Filed	Pending over 6 months	Pending before Magistrate Judge on Referral	Previously Referred to Magistrate Judge; R&R entered	Scheduled Trial Date(s)
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Summers V. SFC, 3:90-0971	Summary Judgment Summary Judgment	7/11/91 7/23/91	X X	X X		8/27/91 11/5/91
Cross Cont. v. Aer Turas, 3:90-1048	Summary Judgment	11/5/91	X		X	2/25/92 5/12/92
Trimble v. Fleming, 3:90-1114	Summary Judgment Summary Judgment	12/31/91 1/24/91	X X	X X		
Bradley v. AGRI, 3:91-0021	Dismiss	1/15/92		X		
Sisk v. Spain, 3:91-0027	Summary Judgment	8/30/91	X		X	1/7/92
Hair v. TN Consolidated Retirement, 3:91-0154	Summary Judgment Summary Judgment	12/13/91 12/20/91	X X	X X		2/25/92 9/15/92
Elkins v. Richardson, 3:91-0167	Summary Judgment	6/24/91	X		X	
Sims v. Ewing, 3:91-0264*	Summary Judgment Partial Summary Judgment Summary Judgment	6/9/92 6/12/92 6/16/92				7/14/92

Case Name & Number	Type of Motion	Date Filed	Pending over 6 months	Pending before Magistrate Judge on Referral	Previously Referred to Magistrate Judge; R&R entered	Scheduled Trial Date(s)
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Dismukes v. Frank, 3:91-0336	Dismiss	3/26/92				6/30/92
Orlando v. Nashville Lodge, 3:91-0364	Dismiss	9/23/91	X	X		7/14/92
	Dismiss	10/4/91	X	X		
	Dismiss	10/21/91	X	X		
Sadler v. Vanderbilt, 3:91-0410	Judgment on Pleadings or Summary Judgment	6/24/91	X	X		
Williams v. TDC&I, 3:91-0413	Summary Judgment	7/17/91	X	X		
Swindler v. Busey, 3:91-0495	Dismiss	9/9/91	X		X	
Southeast v. Forney, 3:91-0497*	Summary Judgment	2/11/92				9/29/92
NPPU v. Tennessean, 3:91-0506	Summary Judgment	9/4/91		X		
	Summary Judgment	10/15/91		X		
McCurdy v. Bowdre, 3:91-0592	Dismiss	5/29/92				12/8/92
	Dismiss	5/29/92				
Bennett v. Frank, 3:91-0594	Dismiss	1/21/92				8/25/92

Case Name & Number	Type of Motion	Date Filed	Pending over 6 months	Pending before Magistrate Judge on Referral	Previously Referred to Magistrate Judge; R&R entered	Scheduled Trial Date(s)
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Prudential v. Metro, 3:91-0609	Partial Summary Judgment Summary Judgment	9/6/91 10/15/91	X X		X X	8/22/91 11/5/91
Global v. Chempower, 3:91-0614	Partial Summary Judgment	4/28/92				
Owens v. CCP, 3:91-0649*	Dismiss or Summary Judgment	6/16/92				8/25/92
Morris v. Montgomery Co., 3:91-0680*	Dismiss or Summary Judgment Dismiss Dismiss or Summary Judgment	10/25/91 10/25/91 10/25/91	X X X		W/drn W/drn W/drn	11/17/92
Noranda Alum v. OCF, 3:91-0730*	Dismiss Transfer	11/21/91 3/16/92	X			
Sunbeam v. Friedman, 3:91-0804	Dismiss or Transfer	10/28/91	X		X	
Coffee v. USA, 3:91-0800	Dismiss	11/26/91	X		W/drn	
Shepherd v. Fowler, 3:91-0882*	Summary Judgment Partial Summary Judgment	4/24/92 6/1/92				8/25/92

Case Name & Number	Type of Motion	Date Filed	Pending over 6 months	Pending before Magistrate Judge on Referral	Previously Referred to Magistrate Judge; R&R entered	Scheduled Trial Date(s)
Jones v. TN Dept. of Safety, 3:91-0911	Summary Judgment	6/1/92		X		7/7/92
Hussey v. Security Federal, 3:91-0969	Judgment on Pleadings	2/12/92			X	9/15/92
Fitzgerald v. Metro, 3:91-1006	Summary Judgment	4/29/92		X		7/6/92
Searcy v. Hillhaven, 3:92-0042*	Dismiss Summary Judgment	5/15/92 5/15/92				6/30/92
Gibson v. Clarksville, 3:92-0051	Dismiss	5/6/92				
Brizendine v. Globe, 3:92-0052*	Summary Judgment	5/22/92				
Williams v. Prater, 3:92-0070*	Remand	1/27/92				
Hill v. Metro Housing, 3:92-0145	Dismiss	3/11/92		X		
Belcher v. Goodall, 3:92-0181	Dismiss Dismiss	3/11/92 3/27/92		X		

Case Name & Number	Type of Motion	Date Filed	Pending over 6 months	Pending before Magistrate Judge on Referral	Previously Referred to Magistrate Judge; R&R entered	Scheduled Trial Date(s)
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Anderson v. Public School, 3:92-0342*	Dismiss	5/22/92				
Allscrips v. Freeborn, 3:92-0364	Remand	5/11/92				

**LEGEND:**

\* Case reassigned to Judge Echols between 4/20/92 and 6/19/92

W/drn Motion referred to Magistrate Judge but referral withdrawn before entry of R&R

## **EXHIBIT 10 TO APPENDIX C**

### **REFERRALS TO MAGISTRATE JUDGES**

**Between October 1, 1991 and May 31, 1992**

The attached charts reflect referrals of civil matters to Magistrate Judge Sandidge and Magistrate Judge Haynes, respectively, during the eight month period between October 1, 1991, through May 31, 1992. The charts include specific cases, the date of the referral, the District Judge who made the referral, and the type of referral or matter referred to the Magistrate Judge. These charts only reflect the referrals to Magistrate Judges made during the eight month period. They do not reflect the referrals made prior to October 1, 1991, that were still active before the Magistrate Judges during the study period. Referrals prior to October 1, 1991, and still active during the study period are on file in the Clerk's Office.

These charts do not reflect any prisoner cases or Social Security cases, nor do they reflect any cases on consent to the Magistrate Judges pursuant to 28 U.S.C. § 636(c).

**REFERRALS  
to  
MAGISTRATE JUDGE KENT SANDIDGE, III**

<i>Case Name and Number</i>	<i>Date of Referral</i>	<i>Type of Referral</i>	<i>Judge</i>
<b>Referrals to Magistrate Judge from October 1, 1991 through May 31, 1992</b>			
Black v. Lojac 3:91-1043	2/19/92	Pretrial Matters including motion to dismiss	Nixon*
Stockard v. Metro Airport Authority 3:91-0613	11/22/91	Pretrial matters including motion to dismiss	Nixon*
Reid v. Opryland 3:91-0805	10/15/91	Pretrial matters	Nixon*
Griffith v. United Methodist Publishing House 3:91-0696	11/22/91	Pretrial matters	Nixon
Duke v. Barrett 3:90-0294	4/8/91 1/7/92	Pretrial matters Pretrial matters	Wiseman*
Nat'l Emergency Services v. Nat'l Medical Enterp. 3:91-0260	1/10/92	Pretrial matters	Nixon

<i>Case Name and Number</i>	<i>Date of Referral</i>	<i>Type of Referral</i>	<i>Judge</i>
Johnson v. Murfreesboro Fire Dept. 3:88-1033	7/26/89 5/21/92	Pretrial matters Non-dispositive motions	Higgins*
Nashville Pressman's Union v. Tennessean 3:91-0506	10/29/91	Pretrial matters including 2 motions for summary judgment	Higgins
Kinnard v. Joule Yacht 3:90-0072	4/21/92	Non-dispositive pretrial matters	Nixon
Murphy v. Golden 3:91-1058	4/21/92	Non-dispositive pretrial matters	Nixon
Computer Shoppe v. Ingram Micro 3:90-1020	11/1/91	Non-dispositive motions	Higgins
Lochinvar Corp. v. Carborundum Co. 3:91-0323	2/28/92	2 Non-dispositive motions	Wiseman*
Glavin v. Champlain Chocolate 3:91-0402	4/23/92	Non-dispositive motions	Nixon
Neathery v. Eastland Health Care 3:90-0738	8/20/91 10/29/91	2 Non-dispositive motions and motion to dismiss or partial SJ Non-dispositive motion	Higgins
Sunbeam-Oster Co. v. Friedman 3:91-0804	11/26/91	Motion to dismiss Non-dispositive motions	Higgins
Barron v. Pedigo Management 1:90-0109	10/31/91	Motion for partial summary judgment	Higgins

<i>Case Name and Number</i>	<i>Date of Referral</i>	<i>Type of Referral</i>	<i>Judge</i>
Maury Co. Bridle & Saddle v. TN Knife Works 1:90-0152	10/1/91	Motion for partial summary judgment	Higgins
Summers v. SFC Acquisition 3:90-1000	10/7/91	2 Motions for summary judgment	Higgins
JD Industries v. Faber 1:90-0132	11/20/91	Motions for summary judgment	Higgins
McMullin v. Hyster Co. 1:91-0111	3/13/92	Non-dispositive motions	Higgins
Cross Aircraft v. Aer Turas Teoranta 3:90-1048	1/8/92	Motion for summary judgment	Higgins
Hallum v. TVA 3:92-0062	4/17/92	Motion to dismiss or for summary judgment	Higgins
Ambrust v. Woolworths 3:91-0979	12/3/91	Title VII	Nixon
Atolagbe v. Cracker Barrel 3:92-0011	1/16/92	Title VII -Motion for summary judgment	Nixon
EEOC v. Bassichis Co. 3:91-1056	1/16/92	Title VII	Nixon
Sanders v. Nashville Bridge Co. 3:91-0747	10/7/91	Title VII -Motion for summary judgment	Nixon*

<i>Case Name and Number</i>	<i>Date of Referral</i>	<i>Type of Referral</i>	<i>Judge</i>
Nicholson v. Hampton 3:91-0833	10/23/92	Title VII	Nixon
King v. Sun Chemical 3:91-0714	3/12/92	Title VII -Motion for summary judgment	Wiseman*
Fitzgerald v. Metro Schools 3:91-1006	12/10/91	Title VII	Higgins
Stewart v. Waste Management 3:91-0571	2/12/92	Title VII	Wiseman*
Bateson v. Shookhoff 3:91-1030	3/17/92	28 USC 1915(d) Referral	Wiseman
Crawford v. Kroger 3:92-0075	1/24/92	28 USC 1915(d) Referral	Wiseman
Am. Electric Fusion v. True Temper Sports 3:90-0952	11/25/91	Settlement Conference	Higgins
Hussey v. Security Federal 3:91-0969	3/2/92	Motion for judgment on pleadings	Higgins
Wade v. Consolidated Freightways 3:91-0365	3/2/92	Motion to dismiss and/or summary judgment	Higgins
Clark Container v. Better Methods 1:91-0094	2/12/92	Motion to dismiss	Higgins

<i>Case Name and Number</i>	<i>Date of Referral</i>	<i>Type of Referral</i>	<i>Judge</i>
Resolution Trust Corp. v. Beck 1:91-0102	10/18/91	Motion to Remand	Higgins
Wilcox v. Wilcox 3:91-0694	10/24/91	Motion to dismiss	Higgins
Sisk v. Spain 3:91-0027	10/1/91	Motion for summary judgment	Higgins
Roberts v. Dupont 3:90-0618	11/22/91	Motion for summary judgment	Higgins
Grizzle v. Cannon County 3:91-0267	12/9/91	2 motions for summary judgment	Higgins
Burris v. White 3:91-0939	2/27/92	Motion to dismiss and/or summary jdgmt and 3 Non-dispositive motions	Higgins
James v. Gruning 3:91-0754	10/29/91	Motion to Dismiss or Transfer	Higgins
Uselton v. Heritage Square 3:90-0615	2/12/92	Non-disposition motions	Higgins
Bell v. Bruce Hardwood 3:91-0538	12/11/91	3 Non-dispositive motions	Higgins

<i>Case Name and Number</i>	<i>Date of Referral</i>	<i>Type of Referral</i>	<i>Judge</i>
Brown v. Wilson Co. School Board 3:89-0740	1/3/92	Non-dispositive motions	Higgins
Winter v. Communication Resource Groups 3:90-1023	12//9/91	Non-dispositive motions	Higgins

\* Transferred to Judge Echols

**REFERRALS**  
to  
**MAGISTRATE JUDGE WILLIAM J. HAYNES, JR.**

<i>Case Name and Number</i>	<i>Date of Referral</i>	<i>Type of Referral</i>	<i>Judge</i>
<b>Referrals to Magistrate Judge from October 1, 1991 through May 31, 1992</b>			
Walker v. Wal-Mart 3:90-1105	10/29/91	Pretrial matters	Nixon*
Hughes v. Greyhound 3:91-0753	11/22/91	Pretrial matters	Nixon
Brizendine v. Inter-City Products 3:91-0898	1/17/92	Pretrial matters, including Motion for summary judgment	Nixon*
Williamson Co. Hospital v. Federal Ins. Co. 3:91-0566	1/24/92	Pretrial matters, including Motion for summary judgment	Nixon
Morris v. Tennessee 3:91-0549	2/14/92	Pretrial matters, including motion for summary judgment	Nixon
Rainer v. Westinghouse Electric 3:91-0934	2/14/92	Pretrial matters, including motion for summary judgment	Nixon*
Sain v. Board of Dentistry 3:91-0871	3/4/92	Pretrial matters	Nixon

<i>Case Name and Number</i>	<i>Date of Referral</i>	<i>Type of Referral</i>	<i>Judge</i>
Oldham v. Heilig-Myers 3:91-0848	3/19/92	Pretrial matters, including motion for summary judgment	Nixon
Ballard v. Gusto Records 3:89-1019	10/25/91	Pretrial matters and pretrial orders	Higgins
Onoh v. Sky Chief 3:91-0615	10/7/91	Pretrial matters, including motion to dismiss Consent	Nixon
Shumaker v. Poulton 3:91-0284	1/17/92	Pretrial matters	Nixon
White v. Sun Chemicals 3:91-0198	5/19/92	Consent	Nixon
Patterson v. Transit Ready Mix 3:90-0032	2/11/92	Consent	Higgins
Harlen Farms v. USA 1:91-0109	2/26/92	Consent	Higgins
Bates and Gaskins v. Dept. of Justice 1:91-0108	1/3/92	Consent and Motion for summary judgment	Higgins
Gibbons v. Attorney General's Office 3:92-0287	3/26/92 4/29/92	28 USC 1915(d) Consent	Wiseman*
Gibson Guitar v. Pattishall 3:91-0872	4/13/92	Case Management	Nixon

<i>Case Name and Number</i>	<i>Date of Referral</i>	<i>Type of Referral</i>	<i>Judge</i>
Webster v. Acuff-Rose 3:92-0122	4/13/92	Case Management	Nixon
Roof v. Jaguar Cars 3:92-0002	4/13/92	Case Management	Nixon
Johnson Mfg. v. Weintraub Bros. 3:92-0095	4/15/92	Case Management	Nixon
Benson & Siman v. Ham 3:92-0173	3/23/92 4/30/92	Case Management 3 motions to Dismiss	Nixon
R.P. Industries v. Commercial Ins. 3:92-0186	4/17/92 4/22/92	Case Management Case Management conference	Nixon
Adams Industries v. Healcroft, Inc. 3:91-0219	12/3/91	Settlement conference	Nixon*
Cherry v. HUD 3:89-0678	1/10/92	Settlement conference	Nixon
Gedelman Estates v. Iratex 3:89-0007	1/31/92	Settlement conference	Nixon
Horizons v. Gault & Peragin 3:90-0944	4/24/92	Settlement conference	Wiseman
Perran v. Steiner Liff 3:90-0549	10/22/91	Settlement conference	Wiseman

<i>Case Name and Number</i>	<i>Date of Referral</i>	<i>Type of Referral</i>	<i>Judge</i>
1st Union Bank v. Sears 3:90-0547	2/24/92	Settlement conference	Wiseman
Witt v. Picker International 3:88-0836	3/12/92	Settlement conference	Higgins
Jackson v. Newble 3:91-0826	10/3/91	28 USC 1915(d)	Nixon
Hill v. Public Schools 3:92-0145	4/24/92	28 USC 1915(d)	Higgins
Moore v. Doubletree Hotel 3:92-0357	4/17/92	28 USC 1915(d)	Wiseman
Davis v. Mid-TN Cable 3:91-0772	10/2/91	Title VII	Nixon
Whitaker v. Rowe Mfg. 3:91-0832	10/17/92	Title VII -2 motions to Dismiss	Nixon
Ware v. Federal Express 3:91-1048	1/16/92	Title VII -Motion to dismiss	Nixon
Chandhurn v. Tennessee 3:91-0081	1/22/92	Title VII	Wiseman*
Crawford v. TN H&E 3:91-0509	2/13/92	Title VII	Wiseman*

<i>Case Name and Number</i>	<i>Date of Referral</i>	<i>Type of Referral</i>	<i>Judge</i>
Jones v. TN Dept. of Safety 3:91-0911	3/2/92	Title VII -Motion for summary judgment	Higgins
Orlando Residence v. Nashville Lodging 3:91-0364	11/5/91	1 Non-dispositive motion 3 Motions to dismiss	Higgins
Whittle v. USA 3:91-0522	10/25/91	Motion to dismiss	Higgins
Shoney's v. Sullivan 3:90-1089	11/1/91	Non-dispositive motions	Higgins
Mohiuddin v. TN H&S 1:91-0104	12/9/91	Motion for summary judgment Non-dispositive motion	Higgins
Brown v. Lawrenceburg 1:91-0103	1/3/91	Motion for summary judgment	Higgins
Coffee v. USA 3:91-0800	1/10/92	Motion to dismiss	Higgins
McClarn v. Jackman 1:91-0138	1/24/92	Motion to dismiss	Higgins
USA v. Cooper 1:91-0133	1/24/92	Motion to dismiss	Higgins
Bradley v. Dept. of Agriculture 3:91-0021	2/11/92	Motion to dismiss	Higgins

<i>Case Name and Number</i>	<i>Date of Referral</i>	<i>Type of Referral</i>	<i>Judge</i>
Brizendine v. Faber Castell 1:91-0116	4/3/92	2 Motions for summary judgment	Higgins
Lewellen v. Metro 3:89-0735	3/27/92	Motion for summary judgment 1 Non-dispositive motion	Higgins
Southland Express v. Scrap Metal 1:92-0029	4/24/92	Motion to dismiss	Higgins
Belcher v. Goodall 3:92-0181	5/8/92	Motion to dismiss	Higgins
Fleming v. Trimble 3:90-1114 (3:90-0512)	5/27/92	4 Non-dispositive motions 1 Motion for summary judgment	Higgins
Wolcott's v. McReynolds 3:90-0775	10/15/90 1/22/91 10/1/91	2 Motions to dismiss Motion to dismiss 3 Motions to dismiss	Higgins
Shoney's v. Sullivan 3:90-1090	8/7/91  10/10/91	Motion to dismiss Motion to Judgment on pleadings 2 Motions to dismiss	Higgins
Swindler v. Busey 3:91-0495	10/25/91	Motion to dismiss Non-dispositive motion	Higgins
Prudential v. Metro Government 3:91-0609	10/24/91	Motion for partial summary judgment Motion for summary judgment	Higgins

<i>Case Name and Number</i>	<i>Date of Referral</i>	<i>Type of Referral</i>	<i>Judge</i>
Pelz v. Williams 3:91-0669	10/29/91	2 Motions to dismiss Non-dispositive motion	Higgins
Clifford v. Franklin 3:91-0578	11/1/91	Motion for judgment on the pleadings	Higgins
McEndree v. St. Thomas Hospital 3:91-0276	11/5/91	Motion for summary judgment	Higgins
Wentworth (Morris) v. Montgomery Co. 3:91-0680	11/5/91	3 Non-dispositive motions 3 Motions to dismiss	Higgins
White v. Guerrero 3:91-0082	12/17/91	Motion to dismiss 2 Non-dispositive motions	Higgins
Haney v. Wean, Inc. 1:91-0077	12/11/91 1/8/92	Non-dispositive motion Motion for summary judgment	Higgins
Pelz v. Williams	1/3/92	Motion to dismiss	Higgins
USA v. \$272155 3:91-0419	1/24/92	Non-dispositive motion	Higgins*

\* Transferred to Judge Echols

## **EXHIBIT 11 TO APPENDIX C**

### **TRIAL SETTINGS**

**October 1, 1991, through May 31, 1992**

The attached charts reflect cases set for trial during the eight month period between October 1, 1991, and May 31, 1992, by active District Judge. The charts distinguish between civil cases and criminal cases on the Court's calendar by "cv" denoting a civil case and "cr" denoting a criminal case. Each chart lists the case number; whether the case was tried, continued, settled, or "bumped;" the date of the order dismissing the case or continuing the trial, if applicable; the reason the case was continued or bumped, if applicable; and the date that the case was rescheduled for trial, if applicable. If the case remained on the Court's trial calendar one week prior to the scheduled trial date, that fact is denoted by an asterisk (\*) after the case number. Those cases transferred to Judge Echols after April 20, 1992, are indicated by an "E" after the case number.

LEGEND	
cv	- Civil case
cr	- Criminal case
E	- Case assigned to Judge Echols after 4/20/92
*	- Case remained on calendar one week prior to scheduled trial date
MTN	- Motion

**TRIAL SETTINGS  
JUDGE JOHN T. NIXON  
October 1, 1991 through May 31, 1992**

<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
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<b>Oct. 1</b>	3:90-0694-cv	Settled		10/10/91	
	3:90-0805-cv	Continued	No date set	10/4/91	Mtn to continue filed 9/20/91 - expert unavailable on scheduled trial date
	3:89-0642-cv E	Continued	2/4/92	9/17/91	Mtn to continue filed 8/30/91 - More time needed to prepare since Magistrate Judge granted (on 8/30/91) mtn. to extend time to answer interrogatories
	3:88-0544-cv	Continued	No date set	8/28/91	Trial continued pending R&R on mtn. for summary judgment filed 7/31/91
	3:91-00045-cr	Continued	2/25/92	11/12/91	
	3:90-00113-cr*	Continued			
	3:91-00156-cr*	Continued	11/5/91	10/15/91	
	3:91-00040-cr	Settled			

<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
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<b>Oct. 7</b>	3:89-1008-cv E	Continued	6/23/92	10/2/91	Mtn to continue filed 9/24/91 - Attorney involved in another case; unavailable for this date
	3:90-0055-cv E	Continued	No date set	7/23/91	Joint Mtn for new Scheduling Order filed 7/15/91--Requesting time for additional discovery
	3:90-0888-cv E	Continued	11/26/91	8/16/91	Mtn for amended Scheduling Order filed 8/6/91--Neither party ready; no discovery taken yet
	3:89-0641-cv E	Continued	1/14/92	9/16/91	Mtn to continue filed 8/30/91--due to continuances, answers to interrogatories now due 4 days prior to trial
	3:91-00094-cr*	Continued			
	3:91-00169-cr	Continued			
	3:91-00125-cr*	Continued			

<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
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<b>Oct. 15</b>	3:90-0254-cv*	Tried (4 days)			
	3:90-1047-cv E	Continued	No date set	9/24/91	Magistrate Judge continued trial pending resolution of pending motions Mtn. to continue filed 9/4/91 - Need time to respond to summary judgment motion. Case now set 5th on docket; desires primary setting due to complexity of preparation Mtn. to continue filed 9/6/91 - Attorney has another federal case scheduled for trial at same time
	3:90-0455-cv	Continued	No date set	9/17/91	
	3:87-0396-cv	Continued	6/9/92	9/17/91	
	3:91-00153-cr*	Continued			
3:91-00175-cr	Continued				
	3:91-00134-cr	Continued			

<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
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<b>Oct. 21</b>	3:90-1105-cv E	Continued	No date set	9/23/91	Mtn. to continue filed 9/13/91-- medical problems unresolved; need more time for discovery
	3:87-0850-cv	Settled		6/3/91	
	3:89-0960-cv	Settled		6/26/91	
	3:90-1076-cv	Continued	2/11/92	8/13/91	Mtn. to continue filed 7/31/91-- Settlement negotiations underway. If fail, need more discovery time
	3:91-00134-cr*	Continued			
	3:91-00137-cr*	Settled			
	3:91-00052-cr	Continued			

<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
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<b>Oct. 28</b>	3:87-0059-cv	Settled		9/23/91	
	3:89-1003-cv	Continued	No date set	10/24/91	Joint Mtn. to continue filed 10/17/91-- Expert not yet deposed
	3:89-0716-cv E	Continued	12/10/01	6/24/91	Mtn. to continue filed 6/13/91-- Discovery incomplete
	3:88-0859-cv	Continued	8/25/92	10/15/91	Mtn. to continue filed 9/30/91--Time needed to fully respond to late-filed motion for summary judgment
	3:90-1051-cv	Continued	1/3/92	9/17/91	Mtn. to continue filed 9/5/91-- Additional time needed to file third party complaint
	3:91-00124-cr 3:91-00059-cr*	Continued Settled	1/7/92	10/29/91	

<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
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<b>Nov. 4</b>	3:89-0248-cv	Continued	11/19/91	11/5/91	Mtn. to continue filed 10/18/91 - discovery incomplete
	3:90-0791-cv	Continued	6/2/92	10/24/91	Mtn. to continue filed 10/16/91 - Attorney has conflict with another case
	3:90-0883-cv* E	Bumped	7/14/92	12/5/91	Criminal trial
	3:91-00156	Continued			
	3:89-0007-cv	Continued	No date set	11/7/91	Mtn to continue filed 10/2/91--motion for summary judgment pending
	3:91-00156-cr*	Tried			
	3:91-00170-cr	Continued			
	3:91-00106-cr	Continued			
	3:91-00146-cr*	Settled			

<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
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<b>Nov. 11</b>	3:90-0982-cv	Dismissed		10/29/91	Mtn. for Summary Judgment granted
	3:85-0772-cv	Dismissed		4/24/91	
	3:91-0116-cv	Continued	3/24/92	10/4/91	Mtn. to continue filed 9/25/91-- motions pending
	3:90-00176-cr	Continued			
	3:91-00045-cr	Continued			
	3:91-00080-cr	Continued			

<b>Nov. 18</b>	3:89-0248-cv	Continued	1/21/92	11/14/91	Mtn. to continue filed 11/8/91 - Discovery incomplete; expert not yet deposed
	3:89-0842-cv	Settled		9/6/91	
	3:91-00116-cr*	Settled			
	3:91-00129-cr	Continued			
	3:91-00196-cr	Continued			

<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
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<b>Nov. 25</b>	3:89-0364-cv* E	Continued	9/1/92	12/3/91	Mtn. to continue filed 11/19/91 - Attorney involved in another trial Jt. Mtn to Amend Scheduling Order filed 10/23/91 - Discovery incomplete
	3:90-0888-cv E	Continued	7/28/92	10/29/91	
	3:91-00042-cr*	Tried (1 day)			
	3:91-00054-cr*	Continued			
	3:91-00206-cr*	Continued			
	3:90-00168-cr	Continued			
3:91-00124-cr	Continued				

<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
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<b>Dec. 2</b>	3:91-0198-cv	Continued	5/19/92	11/8/91	Agreed Order resetting trial date Asbestos case transferred to Multi- District Litigation
	3:90-1122-cv	Transferred		9/91	
	3:86-0752-cv E	Settled	12/2/91	11/22/91	Deft's Mtn. filed 11/13/91 for protective order or to continue trial-- plaintiff to take deposition of defendant after return from foreign country
	3:90-0975-cv	Continued			
	3:91-00079-cr*	Continued			
	3:91-00181-cr*	Continued			
3:91-00051-cr*	Continued				

<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
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<b>Dec. 9</b>	3:90-0993-cv	Settled		6/4/91	
	3:90-0309-cv	Continued	10/13/92	12/6/91	Mtn. to Amend Scheduling Order filed 10/29/91 - one witness not deposed. Other witnesses must travel great distance to court; requests first setting on docket
	3:89-0716-cv*	Continued	5/19/92	12/13/91	Mtn. to continue filed 12/9/91 - Needs time to get an expert
	3:90-0262-cv	Continued	6/23/92	11/22/91	Joint mtn. filed 11/14/91 - More time needed due to pending motions
	3:91-00107-cr* 3:91-00054-cr*	Settled Settled			

<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
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<b>Dec. 16</b>	3:89-0678-cv	Continued	3/2/91	12/18/91	Amended Scheduling Order Mtn. to continue filed 11/22/91--R&R pending; pre-trial order due same time as objections to R & R
	3:90-0856-cv	Continued	2/10/92	11/27/91	
	3:90-0835-cv	Dismissed	5/29/92		Motion for summary judgment granted
	3:90-0060-cv	Settled		10/31/91	
	3:91-00153-cr	Continued			
3:91-00125-cr*	Settled				

<b>Dec. 23</b>	NO SETTINGS
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<b>Dec. 30</b>	NO SETTINGS
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<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
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<b>Jan. 6</b>	1:89-0152-cv	Continued	7/28/92	1/6/92	Mtn. to continue filed 1/2/92--attorney cannot locate defendant
	3:89-0132-cv	Continued	8/18/92	1/3/92	Mtn. to Continue filed 12/23/91 - Defendant has not been served and witness unavailable
	3:90-0742-cv	Continued	6/8/92	1/1/92	Mtn. to continue filed 12/2/91 - discovery incomplete
	3:90-00176-cr*	Tried (3 days)			
	3:91-00124-cr*	Settled			
	3:91-00145-cr	Continued			

<b>Jan. 13</b>	3:89-0713-cv	Continued	8/25/92	1/9/92	Mtn. to continue filed 1/6/92 - Attorney out of country
	3:90-0715-cv	Settled		1/28/92	
	3:89-0641-cv E	Continued	4/7/92	9/23/91	Joint motion to amend Scheduling Order
	3:91-02008-cr*	Settled			
	3:91-00206-cr*	Settled			
	3:91-00095-cr	Continued			
	3:90-00119-cr	Continued			Hearing held on pending motion

<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
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<b>Jan. 20</b>	3:89-0248-cv	Continued	3/31/92	1/23/92	Mtn to continue filed 1/17/92 - Defendant recovering from surgery
	3:91-0069-cv	Dismissed		1/27/92	
	3:90-0765-cv	Continued	4/6/92	1/13/92	Mtn. to continue filed 1/9/92 - Attorney unavailable for trial
	3:91-00209-cr*	Settled			
	3:91-00175-cr	Continued			
3:91-00147-cr	Continued				

<b>Jan. 27</b>	3:89-0722-cv*	Tried (4 hr.), then Settled			Mtn. to continue filed 10/25/91 - Witnesses unable to attend
	3:89-1008-cv E	Continued	7/21/92	10/25/91	
	3:91-00169-cr	Continued			
	3:91-00224-cr	Continued			
	3:91-00006-cr	Continued			
3:91-00106-cr	Continued				

<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
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<b>Feb. 3</b>	3:90-0402-cv	Tried (1 day)			
	3:90-0983-cv	Continued	10/6/92	2/10/92	Agreed Amended Scheduling Order
	3:89-0642-cv E	Continued	4/28/92	9/23/91	Agreed Amended Scheduling Order
	3:90-1047-cv E	Continued	12/15/92	1/23/92	Mtn. to continue filed 1/17/92 - Awaiting R&R on mtn. for summary judgment
	3:91-00052-cr*	Continued			
	3:91-00153-cr*	Tried (7 hr./2 days)			

<b>Feb. 10</b>	3:89-0790-cv	Settled		1/31/92	
	3:90-1076-cv	Settled		2/11/92	
	3:90-0856-cv	Tried (2 days-7 hrs)			
	3:90-00061-cr	Continued			
	3:91-00182-cr	Settled			
	3:91-00196-cr*	Settled			
	3:91-00106-cr*	Tried (4 days-21.5 hrs)			

<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
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<b>Feb. 17</b>	3:90-0424-cv	Continued	9/1/92	12/12/91	Joint mtn to continue filed 5/10/91-- Time needed for additional discovery
	3:90-0732-cv	Dismissed		12/10/91	
	3:91-0342-cv	Continued		1/6/92	Continued by Magistrate Judge-- motion for Summary Judgment filed 11/15/91 pending
	3:88-0824-cv E	Continued	11/10/92	2/21/92	Mtn. to continue filed 2/5/92 - Pending motions for summary judgment
	3:91-00170-cr	Continued			
	3:91-00213-cr*	Settled			
	3:91-00071-cr*	Continued			
	3:92-00232-cr*	Settled			
	3:91-00080-cr*	Continued			

<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
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<b>Feb. 24</b>	3:91-0421-cv	Continued	12/1/92	1/23/92	Mtn. to continue filed 1/17/92 - objections and response to R&R due at time of trial
	3:91-0275-cv	Continued		1/16/92	Mtn. to Stay filed 1/14/92 pending settlement negotiations
	3:89-0726-cv E	Continued	No date set		Mtn. to continue granted at 1/16/92 status conference- motion for partial summary judgment filed 1/27/92
	3:91-00170-cr	Continued			
	3:91-00145-cr	Continued			
	3:91-00178-cr*	Settled			
	3:91-00236-cr	Continued			
	3:90-00126-cr*	Continued			

<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
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<b>Mar. 2</b>	3:90-0581-cv E	Continued	8/18/92	11/12/91	Discovery incomplete, mtn. for summary judgment pending before Magistrate Judge
	3:91-0284-cv	Settled		2/11/92	
	3:90-1038-cv E	Continued	12/8/92	3/12/92	Mtn. to continue filed 2/6/92 - attorney will be out of town on personal business
	3:89-0678-cv	Continued	4/20/92		
	3:91-00051-cr	Continued			
	3:91-00175-cr	Continued			
	3:91-00222-cr	Settled			
	3:91-00218-cr*	Continued			
3:90-00126-cr*	Continued				

<b>Mar. 9</b>	3:90-0011-cv* E	Continued	3/17/92	12/9/91	Recently transferred from another Judge; attorney requested continuance
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<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
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<b>Mar. 16</b>	3:90-0011-cv E	Continued	7/21/92	12/30/91	Witness problems (one sick; one lost)
	3:91-0056-cv	Continued/Settled	No date set	2/28/92	In settlement negotiations
	3:91-0501-cv	Dismissed	3/4/92		
	3:91-00196-cr*	Settled			
	3:91-00145-cr	Continued			
	3:91-00224-cr	Continued			

<b>Mar. 23</b>	3:90-0455-cv*	Tried (3 days)			
	3:89-0986-cv	Dismissed	3/18/92		
	3:91-0116-cv	Continued	7/7/92	3/23//92	Amended Scheduling Order submitted after scheduling conference
	3:90-0856-cv	Tried on 2/10/92			This was back-up date
	3:91-00213-cr	Continued			
	3:91-00212-cr	Settled			
	3:92-00021-cr*	Settled			
	3:92-00011-cr*	Settled			
	3:92-00020-cr*	Continued			
	3:91-00235-cr*	Continued			
	3:91-00051-cr	Continued			

<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
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<b>Mar. 30</b>	3:89-0248-cv*	Tried (4 days)			
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<b>Apr. 6</b>	3:90-0765-cv	Continued	No date set	4/2/92	Continued pending ruling on R&R
	3:90-1003-cv	Settled		6/25/91	
	3:89-0641-cv E	Continued	6/23/92	4/8/92	Mtn. to continue filed 3/30/92 - trial preparation hindered by plaintiff Agreed Amended Scheduling Order
	3:90-0995-cv	Continued	6/30/92	10/22/91	
	3:88-0419-cv	Continued		2/27/92	
	3:90-0947-cv	Continued	8/25/92	3/18/92	Mtn. to continue filed 2/24/92 - pending motion Agreed Amended Scheduling Order
	3:91-00182-cr	Settled			
	3:91-00129-cr*	Tried (3 days)			

<b>Apr. 13</b>	3:91-00129-cr*	Tried (4 days)			
	3:91-00170-cr	Continued	6/16/92		
	3:91-00061-cr*	Continued			
	3:91-0420-cv	Continued	2/16/93	3/25/92	Agreed Order resetting trial due to illness of two witnesses

<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
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<b>Apr. 20</b>	3:89-0678-cv*	Settled		5/8/92	Mtn. to cont filed 4/3/92 - plaintiff in hospital
	3:90-1105-cv E	Continued	No date set	4/13/92	
	3:90-1081-cv	Settled		1/27/92	
	3:91-00095-cr*	Tried (3 days)			
	3:91-00052-cr	Continued			

<b>Apr. 27</b>	3:89-0642-cv E	Continued	10/20/92	2/7/92	Mtn. to continue filed 2/3/92 - more time needed to prepare discovery and depose new parties
	3:91-0314-cv	Dismissed	2/14/92		
	3:91-00095-cr	Tried (4 days)			
	3:91-00006-cr	Continued			
	3:91-00128-cr*	Continued			

<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
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<b>May 4</b>	3:91-0426-cv	Dismissed	2/19/92		
	3:91-0275-cv	Settled	4/7/92		
	3:90-0508-cv	Tried (1 day) then Settled			
	3:91-00095-cr	Tried (4 days)			
	3:91-00169-cr	Continued			
	3:91-00175-cr	Continued			
	3:92-00027-cr*	Settled			
	3:92-00035-cr	Continued			
	3:90-00145-cr	Settled			

<b>May 11</b>	3:91-00095-cr	Tried (2 days)			
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<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
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<b>May 18</b>	3:89-0716-cv E	Tried (before Judge Echols)			
	3:91-0507-cv E	Continued	10/13/92	3/5/92	Jt. mtn to revise Scheduling Order filed 3/3/92
	3:91-0198-cv	Tried (before Magistrate Judge Haynes)			
	3:91-00095-cr	Tried (4 days)			
	3:92-00036-cr	Continued			
	3:91-00236-cr	Continued			

<b>May 25</b>	3:90-1041-cv	Settled	1/30/92		Agreed Order of Settlement
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LEGEND	
cv	- Civil case
cr	- Criminal case
E	- Case assigned to Judge Echols after 4/20/92
*	- Case remained on calendar one week prior to scheduled trial date
MTN	- Motion

**TRIAL SETTINGS**  
**JUDGE THOMAS A. WISEMAN, JR.**  
**October 1, 1991 through May 31, 1992**

<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
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<b>Oct. 1</b>	3:90-0466-cv	Settled		5/23/91	
	3:90-0436-cv	Settled		8/16/91	
	3:90-0522-cv *	Bumped	No date set		Another trial in progress
	3:90-0545-cv *	Tried (4 days)			
	3:91-00066-cr *	Continued			
	3:91-00087-cr *	Continued			
	3:91-00143-cr	Settled			
	3:91-00165-cr	Continued			

<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
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<b>Oct. 7</b>	3:87-0084-cv E	Continued	1/28/92	9/17/91	Mtn to cont. filed 9/13/91--attorney traveling to attend depositions in another case at trial time
	3:90-0159-cv	Settled		10/2/91	
	3:91-00077-cr	Settled			
	3:91-00047-cr	Settled			
	3:91-00085-cr	Settled			
	3:91-00088-cr	Continued			For psychological report
	3:91-00126-cr	Continued			
	3:91-00158-cr	Settled			
	3:91-00154-cr	Settled			

<b>Oct. 14</b>	3:90-0219-cv	Bumped	11/5/91	9/5/91	Judge out of town
	3:88-0993-cv	Continued	3/24/92	9/13/91	At 8/23/91 hearing on motions, Court directed parties to submit revised Scheduling Order
	3:90-0547-cv	Bumped	3/31/92	7/16/91	Judge out of town
	3:90-00083-cr	Bumped	12/3/91		Judge out of town

<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
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<b>Oct. 21</b>	3:90-0264-cv E	Continued	1/28/92	3/25/91	Mtn. to cont. filed on 3/25/91 --attorney's 10-year college reunion scheduled week of trial
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<b>Oct. 28</b>	3:90-0803-cv	Settled		10/10/91	Mtn. to cont. filed 8/27/91--plf recovering from surgery; case is so complex that parties cannot meet scheduling deadlines
	3:90-0646-cv E	Continued	4/14/92	8/28/91	
	3:91-00023-cr	Settled			
	3:91-00115-cr	Settled			
	3:91-00020-cr	Settled			
	3:91-00144-cr	Settled			
	3:91-00157-cr	Settled			
	3:91-00162-cr	Settled			
3:91-00101-cr	Settled				

<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
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<b>Nov. 4</b>	3:90-0673-cv	Transferred		5/8/91	Transferred to Eastern District of Missouri Trial date stricken at Pretrial conference held 10/4/91; Motion to set case for trial filed 11/25/91
	3:90-0922-cv	Continued	3/3/92	11/26/91	
	3:90-0219-cv	Settled		10/30/91	
	3:91-00028-cr	Continued			Trial date stricken at Pretrial conference held 10/10/91
	3:91-00108-cr	Continued			
	3:91-00078-cr*	Tried (1 day)			
	3:91-00012-cr	Continued	No date set		
	3:90-00215-cr	Continued			
	3:91-00157-cr	Continued			

<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
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<b>Nov. 11</b>	3:90-0302-cv	Continued	3/10/92	9/20/91	Second Consent Amended Scheduling Order entered -- attorneys not prepared due to their trial schedules and incomplete discovery
	3:90-0445-cv	Continued	4/14/92	11/26/91	Mtn. for Summary judgment filed 11/1/91- Taken under advisement on 11/12/91
	3:90-0397-cv	Dismissed		8/7/91	Order granting Summary Judgment
	3:91-00099-cr	Continued	11/26/91		
	3:91-00037-cr	Continued			
	3:90-00114-cr	Settled			
	3:91-00165-cr	Settled			
	3:91-00066-cr	Settled			
	3:91-00162-cr	Settled			

<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
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<b>Nov. 18</b>	3:89-0582-cv E	Continued	3/17/92	11/12/91	Mtn. to cont. filed 11/12/91 - Defendant's representative seriously injured in hunting accident and unable to assist in trial preparation
	3:91-0259-cv*	Tried (1 day)			
	3:90-0284-cv	Settled		8/9/91	
	3:91-00184-cr*	Tried (2 days)			
	3:91-00733-cr	Continued			
	3:91-00162-cr	Continued			
	3:90-00181-cr	Continued			
	3:91-00088-cr	Settled			
	3:91-00152-cr*	Continued			

<b>Nov. 25</b>	3:90-0902-cv E	Continued	8/25/92	10/3/91	Amended Scheduling Order submitted on 9/24/91
	3:90-00099-cr	Continued	12/3/91		

<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
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<b>Dec. 2</b>	3:90-0853-cv	Dismissed		7/3/91	Order granting summary judgment
	3:90-0871-cv	Continued	No date set	11/15/91	
	3:90-00087-cr*	Continued			
	3:91-00099-cr*	Continued			
	3:91-00083-cr*	Continued			

<b>Dec. 9</b>	3:90-0918-cv*	Tried (4 days)			New attorney had to "start from scratch"
	3:90-0917-cv	Continued	No date set		
	3:91-00198-cr	Continued	1/21/92		
	3:91-00152-cr	Settled			
	3:91-00085-cr	Settled			
	3:91-00126-cr*	Continued			
	3:91-00172-cr	Continued			
	3:91-00192-cr	Continued			
3:91-00017-cr	Settled				

<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
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<b>Dec. 16</b>	3:86-0156-cv	Dismissed		11/26/91	Order denying defendant's motion for summary judgment but dismissing cause without prejudice
	3:90-0549-cv	Settlement		1/7/92	
	3:91-00194-cr	Continued			
	3:91-00017-cr	Continued			

<b>Dec. 23</b>	NO SETTINGS				
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<b>Dec. 30</b>	3:91-00183-cr	Settled			
	3:89-00170-cr	Continued			
	3:91-00199-cr	Continued		2/25/92	

<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
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<b>Jan. 6</b>	3:90-1095-cv	Continued	No date set	12/20/91	Mtn. to cont. filed 12/18/91; Order entered stating trial date to be reset after ruling on pending motions
	3:90-0849-cv	Transferred		12/4/91	
	3:90-0658-cv*	Tried (4 days)			
	3:91-0348-cv	Continued	2/18/92	12/13/91	In final pretrial order, parties agreed to non-jury trial
	3:91-00200-cr	Continued	1/28/91		
	3:91-00157-cr	Continued			
	3:91-00121-cr	Settled			
	3:91-00201-cr	Continued	3/10/91		
	3:91-00168-cr	Settled			
	3:91-00215-cr	Continued			
	3:91-00211-cr	Continued			
	3:91-00177-cr*	Continued			

<b>Jan. 13</b>	3:89-0813-cv	Continued	5/12/92	12/20/91	Continued telephonically
	3:90-0578-cv	Settled		8/23/91	

<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
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<b>Jan. 20</b>	3:90-0587-cv*	Tried (2 days)			
	3:91-0111-cv	Continued	No date set	10/10/92	Mtn. to continue filed 10/9/91 requesting extension until resolution of dispositive mtns.
	3:88-1092-cv E	Continued	6/2/92	1/2/92	Mtn. to cont. filed 1/2/92--plf in another court in Indiana
	3:91-00155-cr	Settled			
	3:91-00120-cr	Settled			
	3:91-00204-cr	Continued			
	3:91-00198-cr	Settled			

<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
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<b>Jan. 27</b>	3:87-0084-cv E	Continued	5/5/92	1/17/92	Mtn. to continue filed 1/16/92--lead counsel ill
	3:90-0264-cv E	Bumped	6/30/92	1/23/92	Judge out of town all week
	3:89-0492-cv E	Bumped	6/16/92	1/23/92	Judge out of town all week
	3:91-0358-cv	Settled		10/2/91	
	3:90-0800-cv	Transferred		12/4/91	Asbestos case transferred to Multi-District Litigation
	3:91-00133-cr*	Tried (2 days)			
	3:91-00163-cr	Continued	3/17/92		
	3:91-00200-cr	Continued	5/5/92		

<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
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<b>Feb. 3</b>	3:91-0080-cv	Settled		10/2/91	
	3:91-0034-cv	Settled		9/6/91	
	3:91-0112-cv E	Continued	7/7/92	1/22/92	Mtn to continue filed 12/12/91-attorney had another trial in federal court Mtn. to amend Scheduling Order filed 12/12/91 since discovery deadlines extended
	3:90-0171-cv	Continued	5/5/92	12/13/91	
	3:90-00181-cr	Settled			
	3:91-00122-cr	Continued			
	3:91-00221-cr	Continued			
	3:91-00233-cr	Settled			
	3:91-00230-cr	Continued			
	3:91-00234-cr	Continued			

<b>Feb. 10</b>	1:86-0037-cv	Settled		4/22/92	
	3:91-0323-cv E	Continued	7/14/92	12/9/91	Motion to amend Scheduling Order filed 11/5/91; parties had already missed deadlines on Scheduling Order
	3:91-00120-cr	Continued	5/12/92		

<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
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<b>Feb. 17</b>	3:90-0991-cv	Continued	5/18/92	1/23/92	Motion filed 1/22/92 to reschedule hearing on mtns for summary judgment (hearing set for 3/16/2)
	3:90-0989-cv E	Continued	8/25/92	3/2/92	
	3:90-0295-cv	Dismissed		2/3/92	Voluntary dismissal
	3:91-0348-cv	Settled		4/14/92	

<b>Feb. 24</b>	3:90-0668-cv*	Bench trial (1 day)			
	3:91-0066-cv*	Bench trial (4 days)			
	3:90-0843-cv*	Settled		1/8/92	
	3:91-00099-cr	Continued	5/5/92		
	3:91-00199-cr	Settled			
	3:91-00203-cr	Continued	4/14/92		
	3:91-00157-cr	Continued	4/14/92		
	3:91-00240-cr	Settled			
3:91-00230-cr	Continued	4/14/92			

<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
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<b>Mar. 2</b>	3:90-0922-cv	Settled		1/17/92	
	3:89-0488-cv E	Continued	8/4/92	11/27/91	Motion to continue filed 11/1/91--non-compliance with discovery requests resulted in defendant's inability to prepare for trial
	3:91-0283-cv	Continued	6/30/92	12/27/91	Revised Scheduling Order submitted
	3:91-0201-cv	Settled		3/25/92	
	3:91-00194-cr	Continued	5/19/92		
	3:91-00177-cr*	Tried (4 days)			

<b>Mar. 9</b>	3:91-0177-cr	Tried (1 day)			
	3:90-0251-cv E	Continued	No date set	3/6/92	Motions pending
	3:91-0240-cv*	Settled		11/4/91	
	3:90-0302-cv	Continued	9/15/92	4/28/92	Trial date stricken at pretrial conference on 2/28/92
	3:91-00211-cr	Dismissed			
	3:91-00201-cr	Settled			
	3:91-00215-cr*	Tried (3 days)			
	3:91-00204-cr	Continued			

<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
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<b>Mar. 16</b>	3:91-0381-cv*	Settled		11/5/91	
	3:90-0170-cv*	Tried (2 days)			
	3:91-0274-cv	Continued	6/30/92	3/5/92	Mtn. to continue filed 3/2/92 -- pending motions for summary judgment
	3:89-0582-cv E	Continued	6/23/92	12/5/91	
	3:92-00001-cr	Settled			Defendant objected to trial date (had been rescheduled for previous setting)
	3:91-00163-cr	Continued			
	3:92-00008-cr	Continued			
	3:91-00230-cr	Continued	6/23/92		
	3:92-00003-cr	Tried (1 day)			
3:91-00162-cr	Continued				

<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
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<b>Mar. 23</b>	3:88-0993-cv	Bumped	7/7/92	3/4/92	Criminal trials
	3:88-0979-cv	Settled		12/10/91	
	3:90-1084-cv	Dismissed		12/30/91	Order granting motion for summary judgment
	3:91-00215-cr	Continued			
	3:92-00006-cr*	Tried (2 days)			
	3:92-00017-cr	Dismissed			
	3:91-00234-cr*	Tried (3 days)			

<b>Mar. 30</b>	3:90-0547-cv	Settled		2/28/92	
	3:90-0985-cv E	Continued	12/1/92	2/27/92	Mtn. to continue filed 2/3/92-discovery delays necessitated continuance
	3:90-0895-cv	Continued	11/3/92	7/10/92	Parties agreed to continued trial at status conference
	3:91-0371-cv	Continued	5/12/92	12/13/91	Mtn. to amend Scheduling Order filed 12/12/91 requesting extension since parties involved in settlement negotiations

<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
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<b>Apr. 6</b>	3:91-0078-cv	Settled		10/25/91	
	3:91-0046-cv	Continued	8/4/92	2/26/92	Motion to continue filed 2/21/92 -- attorney has trial set in another court
	3:91-0263-cv E	Dismissed	9/1/92	3/4/92	

<b>Apr. 13</b>	3:90-0445-cv	Bumped	9/22/92	4/28/92	Criminal trial
	3:90-0558-cv	Bumped	12/1/92	4/28/92	Criminal trial
	3:91-0268-cv	Continued	No date set	9/6/91	Agreed Order to withdraw jury and file amended complaint
	3:90-0646-cv E	Continued	9/15/92	5/7/92	Trial date stricken at pretrial conference on 3/27/92; motion for summary judgment expected
	3:92-00023-cr*	Tried (4 days)			
	3:92-00026-cr	Continued			
	3:92-00024-cr	Continued			
	3:91-00163-cr	Continued			
	3:91-00230-cr	Continued	7/14/92		
	3:91-00157-cr	Continued			
3:92-00230-cr	Continued				
3:92-00018-cr	Continued				

<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
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<b>Apr. 20</b>	3:92-00023-cr	Tried (2 days)			
	1:89-0058-cv	Settled		4/22/92	
	1:89-0110-cv	Continued	No date set		New party to be added
	1:90-0131-cv	Continued	10/27/92	3/30/92	Court allowed parties additional expert discovery

<b>Apr. 27</b>	3:88-0297-cv	Tried (2 days-Judge Echols court)			
	3:91-00099-cr	Continued			

<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
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<b>May 4</b>	3:87-0084-cv E	Tried (3 days)			
	3:90-0185-cv E	Continued	10/6/92	11/26/91	Original plaintiff died Motion to continue filed 4/13/92--third party plaintiff needed additional time to prepare
	3:90-0832-cv E	Continued	10/20/92	4/14/92	
	3:91-0324-cv	Settled		2/26/92	
	3:90-00171-cr	Continued			
	3:91-00220-cr	Settled			
	3:91-00099-cr	Continued	5/12/92		
	3:91-00234-cr	Continued			
3:92-00008-cr	Continued				

<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
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<b>May 11</b>	3:89-0813-cv	Bumped	7/21/92		Criminal trials
	3:89-0047-cv E	Continued	7/7/92	4/14/92	Mtn. to amend Scheduling Orders filed 4/2/92 due to discovery delays
	3:90-0762-cv E	Settled		6/3/92	
	3:91-0371-cv	Continued	9/22/92	2/14/92	Motion to file third party complaint granted
	3:91-00120-cr*	Tried (3 days)			
	3:91-00163-cr	Continued			
	3:92-00029-cr	Continued	6/23/92		
	3:91-00099-cr	Tried (2 days)			

<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
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<b>May 18</b>	3:90-0991-cv	Continued	10/20/92	2/7/92	Mtn. to continue filed 2/3/92--defense attorney plans to be out of country
	3:91-0161-cv	Continued	9/29/92	2/7/92	Mtn to amend Scheduling Order filed 2/5/92--counterclaim necessitated extensive discovery and settlement negotiation
	3:90-0944-cv	Continued	10/6/92		Trial continued at 5/18/92 motion hearing because of filing of amended complaint and addition of parties
	3:90-0627-cv	Continued	11/10/92	3/25/92	Mtn. to continue filed 3/23/92 -- discovery incomplete and defendant's counsel to attend conference at time of trial
	3:91-00194-cr	Continued			
	3:91-00202-cr	Continued	7/28/92		
	3:92-00030-cr	Continued	6/30/92		
	3:92-00028-cr	Settled			
	3:91-00120-cr	Tried (2 days)			

<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
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<b>May 25</b>	3:89-0196-cv	Dismissed		7/3/91	Order granting mtn. for summary judgment filed 4/1/92
	3:90-1027-cv	Settled	6/2/92	5/7/92	
	3:91-0360-cv E	Continued	12/8/92	6/3/92	Scheduling Order amended at scheduling conference on 5/8/92

LEGEND	
cv	- Civil case
cr	- Criminal case
E	- Case assigned to Judge Echols after 4/20/92
*	- Case remained on calendar one week prior to scheduled trial date
MTN	- Motion

**TRIAL SETTINGS  
JUDGE THOMAS A. HIGGINS  
October 1, 1991 through May 31, 1992**

<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
<b>Oct. 1</b>	3:89-1019-cv	Continued	No date set	10/24/91	Continued due to ongoing trial before Court and discovery dispute
	3:89-0291-cv E	Continued	No date set	9/20/91	Mtn to continue filed 9/13/91--Report & Recommendation pending on mtn. for summary judgment
	3:90-0615-cv	Continued	4/21/92	9/17/92	Scheduling Order entered 5/27/91--vacating trial date due to medical condition of plaintiff
	3:87-0743-cv	Continued			
	3:90-0970-cv	Continued	No date set	9/9/91	Trial continued at pretrial conference -- attorney appointed and mtn to consolidate taken under advisement

<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
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<b>Oct. 7</b>	3:86-0486-cv	Tried (5 days)			
	1:90-0157-cv	Continued			
	3:90-0693-cv	Dismissed		10/1/91	
	1:90-0087-cv	Bumped	6/2/92	3/2/92	Another Civil Trial
	3:89-0771-cv	Settled		10/1/91	
	3:90-0577-cv	Transferred		12/4/91	Asbestos case transferred to Multi-District Litigation
	3:91-00151-cr	Settled			
3:91-00161-cr	Settled				

<b>Oct. 14</b>	3:86-0486-cv	Tried (4 days)			
	1:90-0160-cv	Settled			
	3:90-1088-cv	Settled		12/3/91	
	1:90-0013-cv E	Continued	No date set	9/20/91	Mtn. to continue filed 9/13/91 - pending motion for summary judgment
	3:88-0783-cv	Settled		10/9/91	
	3:91-00100-cr	Continued			
	3:91-00178-cr	Settled			

<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
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<b>Oct. 21</b>	3:86-0486-cv *	Tried (3 days)			
	1:90-0064-cv	Continued	3/16/92	6/6/91	Agreed Amended Scheduling Order--attorneys' trial schedules present conflict; need additional time for discovery
	1:90-0066-cv	Continued	11/12/91	6/17/91	Joint Mtn to amend Scheduling Order filed 6/12/91 requesting trial be moved to Nashville
	1:90-0083-cv	Settled		9/11/91	
	1:90-0092-cv	Settled		9/26/91	
	1:90-0093-cv	Settled		6/18/91	
	1:90-0089-cv	Transferred		1/17/91	Asbestos case transferred to Multi-District Litigation
	1:90-0090-cv	Transferred		1/17/91	Asbestos case transferred to Multi-District Litigation
	1:90-0098-cv	Transferred		1/17/91	Asbestos case transferred to Multi-District Litigation
	1:90-0100-cv	Transferred		1/17/91	Asbestos case transferred to Multi-District Litigation
1:90-0154-cv	Settled		10/7/91		

<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
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<b>Oct. 21 (continued)</b>	1:90-0132-cv	Continued	No date set	9/20/91	Mtn to continue trial filed 9/17/91- pending motion for summary judgment
	1:90-0152-cv *	Tried (2 days)			
	1:90-0065-cv	Continued	No date set	9/24/91	Settlement pending
	1:90-0087-cv	Bumped	6/2/92	3/2/92	Civil Trial
	1:90-0109-cv	Bumped	No date set	10/15/91	Mtn to continue filed 10/1/91 -- discovery incomplete; pending motions
	1:91-0010-cv	Settled			10/16/91
	1:90-0025-cv	Bumped	6/9/92	2/26/92	Civil Trial

<b>Oct. 28</b>	3:86-0486-cv *	Tried (2 days)			
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<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
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<b>Nov. 4</b>	3:89-1019-cv	Continued	No date set	10/24/91	Continued by Order due to ongoing trial
	3:90-0052-cv E	Continued	8/11/92	10/30/91	Continued by Order due to ongoing trial
	3:90-0861-cv	Continued	No date set	10/30/91	Mtn. to continue filed 10/22/91--receivership proceedings
	3:90-0862-cv E	Continued	1/14/92	5/29/91	Mtn. to amend Scheduling Order filed 5/22/91--additional time needed to take depositions
	3:90-1000-cv	Continued	No date set	9/24/91	Mtn to continue filed 9/23/91--motion for summary judgment pending
	1:89-0171-cv	Dismissed		11/5/91	
	1:91-00015-cr	Continued			
	3:91-00179-cr	Continued			

<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
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<b>Nov. 11</b>	1:90-0066-cv	Continued	No date set	11/5/91	Continued on Magistrate Judge's recommendation-- motion for summary judgment pending
	3:88-0220-cv E*	Tried (2 days)			
	3:90-0459-cv	Bumped	7/14/92	2/27/92	Another Civil Trial
	3:90-0738-cv	Continued	No date set	11/5/91	Mtn. to amend Scheduling Order filed 11/1/91--pending motions
	3:90-0486-cv	Transferred		1/17/91	Asbestos case transferred to Multi-District Litigation
	3:90-0638-cv	Transferred		1/17/91	Asbestos case transferred to Multi-District Litigation
	3:90-0644-cv	Transferred		1/17/91	Asbestos case transferred to Multi-District Litigation
	3:90-0491-cv	Transferred		1/17/91	Asbestos case transferred to Multi-District Litigation
	3:90-0641-cv	Transferred		1/17/91	Asbestos case transferred to Multi-District Litigation
	3:90-0584-cv	Transferred		1/17/91	Asbestos case transferred to Multi-District Litigation
	1:91-00018-cr*	Tried (3 days)			
	3:91-00063-cr	Settled			
	3:91-00135-cr	Continued			
	1:90-00001-cr	Continued			

<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
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<b>Nov. 18</b>	3:88-0220-cv E* 3:91-00050-cr 3:91-00179-cr	Tried (4 days) Continued Continued			
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<b>Nov. 25</b>	3:88-0220-cv E* 2:90-0045-cv  3:91-00167-cr 3:87-00167-cr	Tried (2 days) Transferred  Continued Continued		1/17/91	Asbestos case transferred to Multi-District Litigation
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<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
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<b>Dec. 2</b>	3:88-0220-cv E*	Tried (3 days)			
	3:90-1308-cv	Settled		11/27/91	
	3:89-0771-cv	Settled		10/1/91	
	3:90-1020-cv	Continued	No date set	11/18/91	Motion to continue filed 10/21/91-- plf seeking substitute attorney; new attorney will need time to prepare; pending motions
	3:88-0522-cv	Dismissed		11/13/91	
	1:91-00017-cr	Settled			
	3:91-00176-cr	Settled			
3:91-00159-cr	Settled				

<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
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<b>Dec. 9</b>	3:90-0952-cv	Settled		12/9/91	
	3:91-0031-cv E	Continued	No date set	11/18/9	Pending motion before Magistrate Judge to modify class action
	3:88-0220-cv E	Tried (3 days)			
	3:90-1110-cv	Continued	5/19/91	10/23/91	Mtn. to continue filed 10/21/91--third party defendant has not yet filed answer and additional discovery needed
	3:91-00205-cr	Settled			

<b>Dec. 16</b>	3:90-0647-cv	Continued			
	3:90-0274-cv E	Continued	2/25/92	8/9/91	Mtn. to amend Scheduling Order filed 8/6/91--additional time needed for depositions and discovery
	3:91-0002-cv	Settled		6/11/91	
	3:90-0626-cv	Dismissed		11/5/91	
	1:91-00015-cr	Tried (4 days)			
	1:91-00135-cr	Transferred			to Judge Nixon
	1:91-00014-cr*	Settled			
	1.91-00019-cr	Settled			

<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
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<b>Dec. 23</b>	<b>NO SETTINGS</b>				
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<b>Dec. 30</b>	<b>NO SETTINGS</b>				
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<b>Jan. 6</b>	1:90-0122-cv	Dismissed			
	3:90-0618-cv	Continued	No date set	12/16/91	Trial cancelled pending decision by 6CCA on related case Joint Mtn. to continue filed 12/13/91 pending Magistrate Report & Recommendation and ruling on mtn. for summary judgment Telephonically requested
	3:91-0027-cv	Continued	No date set	12/17/91	
	3:90-0221-cv	Continued	5/5/92		

<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
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<b>Jan. 13</b>	3:90-0862-cv E	Continued	5/5/92	8/27/91	Mtn. to amend Scheduling Order filed 8/26/91 -- additional time needed to locate and depose experts in complex case
	3:91-0043-cv	Settled		1/10/92	
	3:90-0920-cv	Continued	No date set	12/23/91	Agreed Order -- pending motion for summary judgment
	3:90-1061-cv	Settled		1/3/92	
	3:90-0468-cv	Settled		12/23/91	
	3:91-00100-cr	Continued			
3:91-00223-cr	Continued				

<b>Jan. 20</b>	3:89-0534-cv	Dismissed		12/9/91	
	3:91-00100-cr	Tried (2 days)			
	3:91-00205-cr	Continued			

<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
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<b>Jan. 27</b>	3:90-0669-cv	Continued			
	3:89-0629-cv	Settled		1/22/92	
	3:89-0690-cv	Settled		1/24/92	
	3:90-0317-cv	Settled		1/24/92	
	1:91-00017-cr	Settled			
	3:91-00219-cr	Continued			
	3:91-00216-cr	Continued			
	3:91-00159-cr	Settled			

<b>Feb. 3</b>	3:90-1023-cv*	Continued	2/11/92	2/4/92	Deposition of expert incomplete
	3:90-0984-cv*	Settled		2/6/92	
	3:91-0222-cv*	Tried (4 days)			
	3:91-00226-cr*	Continued			
	3:91-00229-cr*	Settled		2/13/92	

<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
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<b>Feb. 10</b>	3:89-0815-cv	Settled		1/8/92	
	3:90-1120-cv	Continued	9/1/92	1/15/92	Amended Scheduling Order--new atty for defts
	3:90-0268-cv	Continued	2/18/92	2/6/92	Motion to continue made at 2/5/92 hearing
	3:90-0181-cv	Settled		10/16/91	
	3:90-1023-cv	Continued	4/14/92	2/7/92	Motion to continue filed 2/5/92-- additional time to employ expert and allow attorneys to resolve conflicts in schedule; pending summary judgment mtn
	1:90-0152-cv 3:91-00096-cr	Settled Continued			2/13/92

<b>Feb. 17</b>	3:91-0343-cv	Dismissed		1/3/92	
	1:90-0054-cv	Settled		11/14/91	
	3:91-0267-cv	Settled		1/23/92	
	3:91-0493-cv	Tried (2 days)			
	3:90-0268-cv	Settled		2/11/92	
	3:91-00239-cr	Continued			

<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
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<b>Feb. 24</b>	3:90-0274-cv E	Continued	5/12/92	12/3/91	Mtn. to amend Scheduling Order filed 11/26/91--additional time to complete depositions
	3:90-1048-cv	Continued	5/12/92	12/16/91	Mtn. to reset filed 12/12/91--atty has trial scheduled same date and additional time is needed for discovery and resolution of pending motions
	3:91-0154-cv	Continued	9/15/92	1/6/92	Amended Scheduling Order continuing trial pending resolution of dispositive motions
	3:84-1095-cv	Continued	No date set	10/23/91	Mtn. to amend Scheduling Order filed 10/3/91 seeking extension of time to negotiate settlement
	1:89-0034-cv*	Tried (2 days)			
	3:90-0649-cv	Continued	3/31/92	1/30/92	Parties not ready for trial
	3:91-0333-cv	Settled		12/23/91	
	3:91-00205-cr	Continued			
	1:91-00001-cr	Continued			

<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
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<b>Mar. 2</b>	NO SETTINGS				
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<b>Mar. 9</b>	3:90-0670-cv	Settled		4/23/92	
	3:90-1111-cv	Settled		10/16/91	
	3:91-0367-cv	Settled		2/13/92	
	3:91-0523-cv	Dismissed		12/12/91	
	3:91-00216-cr	Settled			
	3:91-00225-cr	Continued			
	1:92-00001-cr	Continued			

<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
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<b>Mar. 16</b>	1:90-0064-cv	Settled		3/6/92	
	1:91-0035-cv	Settled		2/10/92	
	1:91-0056-cv	Tried (3 days)			
	1:91-0063-cv	Settled		2/13/92	
	1:91-0080-cv	Settled		2/18/92	
	1:91-0045-cv E	Continued	4/7/92	10/25/91	Mtn. to continue filed 9/26/91 -- attorney has vacation planned at trial time
	1:91-0059-cv	Settled		3/17/92	
	1:91-0058-cv	Continued	6/23/92	12/30/91	Mtn. to amend Scheduling Order filed 11/13/91--extension of time to complete discovery
	1:91-0074-cv	Settled		11/27/91	
	1:91-0090-cv	Continued	6/30/92	1/3/91	Joint mtn to continue filed 12/20/91- - discovery incomplete due to other trials; plf's attorney had the flu
	3:91-00239-cr	Continued			

<b>Mar. 23</b>	NO SETTINGS				
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<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
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<b>Mar. 30</b>	3:90-1090-cv	Dismissed		1/23/92	Voluntary dismissal due to health problems
	3:90-0649-cv	Dismissed		3/24/92	
	3:92-00002-cr	Tried (3 days)			
	3:91-00241-cr	Continued			
	3:92-00014-cr	Continued			

<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
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<b>Apr. 6</b>	3:91-0103-cv	Tried (1 day)			
	3:91-0212-cv	Settled		9/11/91	
	1:91-0049-cv	Settled		3/24/92	
	3:91-0578-cv	Continued	9/22/92	3/30/92	Joint mtn. to continue trial filed 3/13/92--discovery incomplete since discovery stayed by Magistrate Judge pending ruling on mtn. for judgment on the pleadings
	3:91-0351-cv	Dismissed		3/6/92	
	1:91-0045-cv E	Continued	9/29/92	2/12/92	Joint mtn. filed 1/30/92--additional time needed for discovery. Defendant's attorney unable to continue representation and new attorney needs time to prepare
	3:91-00219-cr	Continued			
	3:92-00019-cr	Settled			
	3:92-00007-cr	Continued			

<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
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<b>Apr. 13</b>	3:90-1023-cv 1:9-00213-cv E	Tried (3 days) - Then settled Continued		4/1/92	Joint motion filed 3/24/92 -- pending mtn. for summary judgment
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<b>Apr. 20</b>	3:90-0615-cv* 3:91-0328-cv 3:90-0699-cv 3:92-00005-cr	Settled Dismissed Continued Continued		4/10/92 12/3/91	
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<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
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<b>Apr. 27</b>	3:91-0144-cv E	Continued	5/11/93	5/18/92	Joint Mtn. to continue filed 1/16/92-- additional time for discovery since filing of amended complaint
	3:84-1095-cv	Settled		4/29/92	
	3:91-0276-cv E	Continued	9/2/92	4/21/92	Joint Mtn to continue filed 4/15/92-- attorneys have conflicting trials scheduled; expert is unavailable on trial date
	3:92-0346-cv	Continued	No date set	4/10/92	Mtn. to continue filed 4/8/92
	3:91-00231-cr	Settled			
	3:92-00038-cr	Continued			

<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
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<b>May 4</b>	3:90-0862-cv E	Continued	8/18/92	4/13/92	Mtn. to continue filed 4/7/92 -- principal attorney is retiring and new attorney needs additional time for deposition of experts
	3:90-0221-cv	Bumped	11/17/92	5/7/92	Criminal trial
	3:91-0447-cv E	Continued	7/7/92	3/12/92	Mtn. to amend Scheduling Order filed 3/6/92 to allow for inspection by expert and additional discovery
	3:91-0762-cv 3:91-00096-cr	Settled Tried (2 days)		3/2/92	

<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
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<b>May 11</b>	3:91-00096-cr	Tried (4 days) -	9/1/92	3/3/92	Joint Mtn. to amend Scheduling Order filed 2/5/92 -- need additional time to complete depositions and discovery Mtn to continue filed 4/13/92-- pending motion for summary judgment
	3:90-0274-cv	Continued			
	3:90-1048-cv	Continued	No date set	4/20/92	
	3:91-0811-cv	Settled		3/26/92	
	3:91-00226-cr	Settled			
	3:92-00037-cr	Dismissed			
	3:92-00041-cr	Continued			

<b>May 18</b>	3:90-1110-cv	Continued	7/28/92	4/28/92	Deadlines extended after dismissal of third party action
	3:91-0150-cv	Settled		4/3/92	
	3:90-0024-cv	Settled		5/11/92	
	3:92-00042-cr	Tried (4 days)			
	3:86-00055-cr				
	1:92-00002-cr	Settled			

<i>Week Beginning</i>	<i>Case Number</i>	<i>Tried Bumped Dismissed Settled Continued</i>	<i>Continued to:</i>	<i>Date of Order Dismissing, Continuing and/or Resetting Case:</i>	<i>Reason:</i>
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<b>May 25</b>	3:92-00042-cr	Tried (1 day)			
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**EXHIBIT 12 TO APPENDIX C**

**CIVIL TRIAL INTERRUPTIONS**

**October 1, 1991 - September 30, 1992**

The attached bar graphs reflect, by active District Judge, the dates and times spent in Court in civil jury and non-jury trials, and the incidence of interruption of those trials for the twelve month period of time from October 1, 1991, through September 30, 1992, for Judge Nixon, Judge Wiseman, and Judge Higgins. The civil trial hours are shaded dark, whereas the non-jury matters are described in the blocks without shading.

The underlying data used to compile this report, including the specific times, specific cases, and specific in-court matters, are on file with the Clerk's office.

JUDGE NIXON  
 CIVIL JURY TRIALS  
from October 1, 1991 through September 30, 1992

1. **EEOC v. Clarksville, 3:90-0254**  
 Civil Jury trial  
 Total of 3 days/15.75 hrs.  
 1 plf; 1 dft.  
 Type of Case: Job discrimination (age)

DAY/TIME	8:00	9:00	10:00	11:00	12:00	1:00	2:00	3:00	4:00	5:00	6:00	
Tues., 10/15/91		Civil Jury Trial					Civil Jury Trial					
Wed., 10/16/91		Civil Jury Trial					Criminal Plea	Civil Jury Trial			GJ	
Thurs. 10/17/91		Civil Jury Trial				Civil Jury Trial	Criminal Hearing	Criminal Sentencing		Civil Jury		

2. **Ziegler v. Metro, 3:89-0722**  
**Civil Jury trial**  
**Total of 1 day/4 hrs. - Settled**  
**2 plfs; 14 dfts**  
**Type of case: Prisoner civil rights**

DAY/TIME	8:00	9:00	10:00	11:00	12:00	1:00	2:00	3:00	4:00	5:00	6:00	
Tues., 1/28/92		Civil Jury Trial (SETTLED)										

Judge Nixon  
 Civil Jury Trial

3. **Johnson v. Lanter Co., 3:89-0248**  
**Civil Jury trial**  
**4 days/17.33 hrs.**  
**2 plf; 2 dfts**  
**Type of case: Personal Injury**

DAY/TIME	8:00		9:00		10:00		11:00		12:00		1:00		2:00		3:00		4:00		5:00		6:00		
Tues., 3/31/92							Cv. Jury						Civil Motion	Civil Jury Trial									
Wed., 4/1/92			Civil Jury Trial										Civil Jury Trial										
Thurs., 4/2/92			Civil Jury Trial	Cv. StC	Cv. StC	Cv. StC					Cr. Plea	Civil Jury Trial											
Fri., 4/3/92			Civil Jury Trial (end)								Cr. Sent	Cr. Plea	Cr. Sent	Civil Hearing	Civil Hearing								

Judge Nixon  
Civil Jury Trial

4. **Fite v. Cantrell, 1:89-0043**  
**Civil Jury Trial**  
**Total of 2 days/ 6.5 hours**  
**1 plf; 4 dfts.**  
**Type of case: Prisoner Civil Rights**

DAY/TIME	8:00	9:00	10:00	11:00	12:00	1:00	2:00	3:00	4:00	5:00	6:00	
Tues., 9/8/92				Civil Jury Trial				Cr. Sent	Civil Jury Trial		Cr. Sent	
Wed., 9/9/92							Civil Jury Trial		GJ	Ver dict		

Judge Nixon  
 Civil Jury Trial

5. **Munoz v. CCC Express, 3:90-0805**  
**Civil Jury Trial**  
**Total of 7 days/ 46.0 hrs.**  
**3 plfs.; 3 dfts.**  
**Type of case: Diversity (Personal Injury)**

DAY/TIME	8:00	9:00	10:00	11:00	12:00	1:00	2:00	3:00	4:00	5:00	6:00	
Tues., 9/22/92			Civil Jury Trial									
Wed., 9/23/92			Civil Jury Trial				Cr. Plea	Civil Jury Trial				
Thurs., 9/24/92			Civil Jury Trial									
Fri., 9/25/92			Civil Jury Trial				Cr. Sch. Cnf	Civil Oral Argument				
Mon., 9/28/92			Civil Jury Trial				Cr. Plea	Cr. Sent	Civil Jury Trial			
Tues., 9/29/92			Civil Jury Trial									
Wed., 9/30/92			Civil Jury Trial				Cr. Sent	Civil Jury Trial				

Judge Nixon  
Civil Jury Trial

JUDGE WISEMAN  
 CIVIL JURY TRIALS  
from October 1, 1991 through September 30, 1992

1. Aetna v. Vaughter, 3:90-0545  
 Civil Jury trial  
 Total of 4 days/20.5 hours  
 1 plf; 3 dft; 3 counterclaimants; 1 counterdft  
Type of case: Declaratory judgment (Insurance)

DAY/TIME	8:00	9:00	10:00	11:00	12:00	1:00	2:00	3:00	4:00	5:00	6:00
Tues., 10/1/91		Civil Jury Trial				Civil Jury Trial					
Wed., 10/2/91		Civil Jury Trial				Civil Jury Trial					
Thurs. 10/3/91		Civil Jury Trial				Civil Jury Trial					
Fri., 10/4/91		Civil Jury Trial	Jury	out			Cv. PTC	Trial (end)			

2. **Eudy v. Darnell, 3:90-0918**  
**Civil Jury Trial**  
**Total of 4 days/17 hours**  
**1 plf; 3 dfts; 3 counterclaimants; 1 counterdft**  
**Type of case: Racketeering (RICO)**

DAY/TIME	8:00	9:00	10:00	11:00	12:00	1:00	2:00	3:00	4:00	5:00	6:00	
Tues., 12/10/91		Civil Jury Trial						Civil Jury Trial				
Wed., 12/11/91		Civil Jury Trial					Civil Jury Trial					
Thurs., 12/12/91		Cv. Mtn	Naturaliz		Civil Trial		Civil Jury Trial			Civil Trial	Civil Trial	
Fri., 12/13/91		Civil Jury Trial (end)			Cr. Sent		Cv. PTC					

Judge Wiseman  
 Civil Jury Trials

3. Locklear v. Vanderbilt Medical Center, 3:90-0658  
 Civil Jury trial  
 Total of 4 days/25.17 hr  
 2 plfs; 5 dfts  
 Type of case: Personal Injury

DAY/TIME	8:00	9:00	10:00	11:00	12:00	1:00	2:00	3:00	4:00	5:00	6:00
Tues., 1/7/92		Cr. hrg.	Civil Jury Trial				Cr. mot	Civil Jury Trial			
Wed., 1/8/92		In Cham	Civil Jury Trial				Civil Jury Trial				
Thurs. 1/9/92			Civil Jury Trial				Civil Jury Trial				
Fri., 1/10/92			Civil Jury Trial				Civil Jury Trial (Jury in 3:55)				

Judge Wiseman  
 Civil Jury Trials

4. **Hollandsworth v. State Farm Ins., 3:90-0587**  
**Civil Jury trial**  
**Total of 2 days/8.25 hrs.**  
**2 plf; 1 dft**  
**Type of case: 28:1441 (Notice of Removal)**

DAY/TIME	8:00	9:00	10:00	11:00	12:00	1:00	2:00	3:00	4:00	5:00	6:00
Tues., 1/21/92		2 Cr. Pleas		Civil Jury Trial		Civil Jury Trial					
Wed., 1/22/92		Civil Jury Trial				Volun. dis.					

Judge Wiseman  
 Civil Jury Trials

5. **Martin v. K-Mart, 3:90-0170**  
**Civil jury trial**  
**Total of 2 days/3.5 hrs**  
**1 plf; 1 dft**  
**Type of case: Diversity**

DAY/TIME	8:00	9:00	10:00	11:00	12:00	1:00	2:00	3:00	4:00	5:00	6:00
Tues., 3/17/92		Criminal Jury Trial					Civil Jury Trial				
Wed., 3/18/92		Civil Jury Trial									

6. **Majors v. Ashe, 3:89-0813**  
**Civil Jury Trial**  
**Total of 2 days/5.0 hours**  
**1 plf; 3 dfts**  
**Type of case: Civil Rights Act**

DAY/TIME	8:00	9:00	10:00	11:00	12:00	1:00	2:00	3:00	4:00	5:00	6:00	
Tues., 7/21/92		Criminal Jury Trial				Cr. Jury	Cr. Plea	Civil Jury Trial				
Wed., 7/22/92		Cv. s- conf.	Civil Jury Trial (mistrial)									

Judge Wiseman  
Civil Jury Trials

7. **Majors v. Ashe, 3:89-0813**  
**Civil Jury Trial**  
**Total of 4 days/26.5 hours**  
**1 plf; 3 dfts**  
**Type of case: Civil Rights Act**

DAY/TIME	8:00	9:00	10:00	11:00	12:00	1:00	2:00	3:00	4:00	5:00	6:00	
Thurs., 7/23/92		Civil Jury Trial					Civil Jury Trial					
Fri., 7/24/92		Civil Jury Trial					Civil Jury Trial					
Mon., 7/27/92		Cr. Plea	Cr. hrg	Cr. Sentencing		Cr. Sent						
Tues., 7/28/92		Cr. Plea										
Wed., 7/29/92		Civil Jury Trial		Cv. mtn		Civil Jury Trial						
Thurs., 7/30/92		Civil Jury Trial				Civil Jury Trial						
Fri., 7/31/92				Jury in								

Judge Wiseman  
Civil Jury Trials

8. **Adams v. Mudri, 3:90-0785**  
**Civil Jury Trial**  
**Total of 2 days/9.5 hours**  
**1 plf; 1 dft**  
**Type of case: Personal Injury**

DAY/TIME	8:00	9:00	10:00	11:00	12:00	1:00	2:00	3:00	4:00	5:00	6:00	
Tues., 8/25/92		Civil Jury Trial					Civil Jury Trial					
Wed., 8/26/92		Civil Jury Trial										

Judge Wiseman  
Civil Jury Trials

JUDGE HIGGINS  
 CIVIL JURY TRIALS  
 from October 1, 1991 through September 30, 1992

1. **Crowe v. Orkin, 3:88-0220**  
 Civil Jury trial  
 Total of 14 days; 76.0 hours  
 2 plfs; 3 dfts  
 Type of case: Personal Injury

DAY/TIME	8:00	9:00	10:00	11:00	12:00	1:00	2:00	3:00	4:00	5:00	6:00	
Tues., 11/12/91		Cr. Plea	Criminal Jury Trial				Criminal Jury Trial		Civil Jury Trial	Civil Jury Trial		
Wed., 11/13/91		Criminal Jury Trial					Criminal Jury Trial					
Thurs., 11/14/91		Criminal Jury Trial					Cr. Sent	Cr. Sent				
Fri., 11/15/91		Civil Jury Trial										
Mon., 11/18/91		Criminal Plea										
Tues., 11/19/91		Civil Jury Trial					Civil Jury Trial					
Wed., 11/20/91		Civil Jury Trial				GJ						
Thurs., 11/21/91		Civil Jury Trial					Civil Jury Trial				GJ	
Fri., 11/22/91		Civil Jury Trial					Criminal hearing	Civil Jury Trial				
Mon., 11/25/91			Cv. PTC	Cr. Sentencing		Criminal Sentencing			Criminal Sentencing (Graph continued)			

Crowe v. Orkin, 3:88-0220  
 (Continued)

DAY/TIME	8:00	9:00	10:00	11:00	12:00	1:00	2:00	3:00	4:00	5:00	6:00
Tues., 11/26/91		Cr. Hrg.	Criminal Plea					Civil Jury Trial			
Wed., 11/27/91		Civil Jury Trial					Civil Jury Trial				
Thurs 11/28/91	HOLIDAY										
Fri., 11/29/91	HOLIDAY										
Mon., 12/2/91		Criminal Plea and Sentencing					Criminal Plea	Cr. Hrg	Cr. Plea		
Tues., 12/3/91		Civil Jury Trial					Cv PO	Civil Jury Trial			
Wed./., 12/4/91		Civil Jury Trial					Civil Jury Trial				
Thurs., 02/5/91			Cr. Jury								
Fri., 12/6/91		None									
Mon., 12/9/91		Civil Jury Trial					Civil Jury Trial				
Tues., 12/10/91		Civil Jury Trial					Civil Jury Trial				
Wed., 12/11/91		Civil Jury Trial									

Judge Higgins  
 Civil Jury Trials

2. **Tuck v. HCA, 3:91-0222**  
**Civil Jury trial**  
**Total of 4 days/22 hrs.**  
**1 plf; 2 dfts**  
**Type of case: Civil Rights Act**

DAY/TIME	8:00	9:00	10:00	11:00	12:00	1:00	2:00	3:00	4:00	5:00	6:00
Tues., 2/4/92		9:00 to 10:30 Civil Motion hearing				Civil Jury Trial					
		9:05 to 12:00 Civil Jury Trial									
Wed., 2/5/92		Cv. Status	Civil Jury Trial								
Thurs., 2/6/92		Civil Jury Trial				Cv. PTC	1:15 to 5:00 Civil Jury Trial				
						2:00 to 2:30 Cv. Status conf.					
Fri., 2/7/92		Civil Jury Tr.	Cv. mtn			Civil motion hearing	Criminal Sentencing				

3. **Curto v. Norwood, 1:91-0056**  
**Civil Jury trial**  
**Total of 3 days/9 hrs.**  
**1 plf; 2 dfts**  
**Type of case: Personal Injury**

DAY/TIME	8:00	9:00	10:00	11:00	12:00	1:00	2:00	3:00	4:00	5:00	6:00
Mon., 3/16/92		Civil Jury Trial									
Tues., 3/17/92		Civil Jury Trial				Civil Jury Trial					
Wed., 3/18/92		Civil Jury Trial									

4. **Winter v. Communications Resource, 3:90-1023**  
**Civil jury trial**  
**Total of 3 days/13.5 hrs.**  
**1 plf; 2 dfts**  
**Type of case: Fraud**

DAY/TIME	8:00	9:00	10:00	11:00	12:00	1:00	2:00	3:00	4:00	5:00	6:00
Tues. 4/14/92		Civil Jury Trial				Civil Jury Trial					
Wed., 4/15/92		Civil Jury Trial									
Thurs., 4/16/92		Civil Jury Trial					Criminal Sentencing				

**5. Kentucky Life v. Jones, 1:90-0025**  
**Civil Jury Trial**  
**Total of 4 days/23 hours**  
**1 plf; 2 dfts; 2 counterclm; 1 counterdft**  
**Type of case: Diversity (Declaratory Judgment)**

DAY/TIME	8:00	9:00	10:00	11:00	12:00	1:00	2:00	3:00	4:00	5:00	6:00		
Tues., 6/9/92		Civil Jury Trial					Civil Jury Trial						
Wed., 6/10/92		Civil Jury Trial					Civil Jury Trial						
Thurs., 6/11/92		Civil Jury Trial					Cr. Hrg	Cr. Sent.	Civil Jury Trial				
Fri., 6/12/92			Civil Jury Trial				Cr. Hrg	Cr. Sent.					

6. **Harwell v. Harwell, 1:91-0058**  
**Civil Jury Trial**  
**Total of 1 day; 4.5 hrs.**  
**1 plf; 1 dft**  
**Type of case: Diversity (Personal Injury)**

DAY/TIME	8:00	9:00	10:00	11:00	12:00	1:00	2:00	3:00	4:00	5:00	6:00
Tues., 6/23/92			Civil Jury Trial			Cr. Sent	Civil Jury Trial		Cr. Jury	Ver. dft.	

7. Al-Jabbar v. Atwood, 3:90-0550  
**Civil Jury Trial**  
**Total of 5 days/19 hours**  
**1 Plaintiff; 5 Defendants**  
**Type of case: Prisoner Civil Rights**

DAY/TIME	8:00	9:00	10:00	11:00	12:00	1:00	2:00	3:00	4:00	5:00	6:00	
Tues., 8/11/92			Cr. Plea	Civil Jury Trial				Criminal Jury Trial		Cr Tr		
				Criminal Jury Trial								
Wed., 8/12/92		Criminal Jury Trial				Cv. Status cnf	Criminal Jury Trial					
Thur., 8/13/92		Civil Jury Trial				Civil Jury Trial	Cv. PTC	Cv. Cnf	Civil Jury Trial			
Fri., 8/14/92		Civil Jury Trial				Civil Jury Trial						
Mon., 8/17/92		Civil Jury Trial				Cham Mtg	Cr. mtn	Criminal Motion hearing				
Tues., 8/18/92		Civil Trial (end)										

## APPENDIX D

### ASSESSMENT OF THE CRIMINAL DOCKET

#### I. Analysis of the Data.

To accomplish the task mandated by 28 U.S.C. § 472(c)(1), a committee of the Advisory Group was charged with assessing the criminal docket. It developed a statistical analysis of changes that have taken place in this District's criminal and civil case load and in-court hour load from 1985 through 1992; analyzed, through consideration of statutory, regulatory and policy changes, those factors that have produced or may continue to influence an increase in the criminal case or hour load; interviewed or received input from the active District Judges, the Magistrate Judges, the United States Attorney, and others to assess factors that might be reflected in statistics and to examine internal policies; and examined the interplay between an apparently expanding criminal docket and an apparently shrinking civil docket.

Although the number of criminal felony case filings has remained fairly stable over the last twelve years,<sup>1</sup> the number of Assistant United States Attorneys in this District increased from approximately 10 to 19, between 1985 and 1992. The statistics reveal a shift in types of criminal cases prosecuted to more paper-intensive fraud cases, as well as some increase in drug and gun cases.<sup>2</sup>

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<sup>1</sup> The criminal felony case filings have fluctuated from a low of 174 for statistical year (SY) 1988 to a high of 233 in statistical year 1991. In SY 1984, there were 210 criminal case filings as compared to 196 criminal case filings in SY 1992, ending June 30. For the statistical year ending September 30, 1992, there were 178 felony case filings.

For the calendar year 1992, there were 190 new criminal cases filed, including both felonies and misdemeanors, including 256 criminal defendants. Those filings reflect a 32% decrease in total criminal filings from calendar year 1991, when 273 new criminal cases (both felony and misdemeanors) were filed, including 381 defendants. For the first half of the calendar year 1993, there were 104 new criminal cases filed (including felonies and misdemeanors), including 130 defendants.

<sup>2</sup> There has been a significant increase in the number of cases involving weapons and firearms, but little increase in the number of drug cases, including marijuana, controlled substances, and narcotics. See Exhibit 1 to this Appendix for a breakdown of the types of criminal felony cases filed from SY 1984, through SY 1992.

The most dramatic change in this District's criminal docket over the last twelve years has been a striking increase in the overall number of in-court hours and the percentage of in-court time spent on criminal versus civil matters, as shown by the data contained in Exhibit 8 to Appendix C. That data also show that the total number of hours spent by the active District Judges in court on all matters, both civil and criminal, has not changed appreciably, although there has been a small increase. These changes are consistent for each Judge. Moreover, the average<sup>3</sup> time per criminal trial does not appear to have changed,<sup>4</sup> so the increase in the total trial time is due to more criminal cases going to trial. During the same time period, the number of civil trials decreased significantly.<sup>5</sup> The total amount of time on civil matters correspondingly decreased, and the average duration per civil trial did not appear to change significantly. Again, the changes were consistent for each Judge.<sup>6</sup>

## II. Statutory, Regulatory and Administrative Policy Changes

Although some of the changes in federal criminal law took place in the early 1980s (e.g., enactment of the Victim and Witness Protection Act in 1982, and the Comprehensive Criminal Control Act in 1984), the most striking changes took place in

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<sup>3</sup> For these purposes, "average" indicates the arithmetic mean, not the median.

<sup>4</sup> The time spent in Court on plea and sentencing hearings before and after the effective of the Federal Sentencing Guidelines (November 1, 1987) has not changed significantly, although both Judge Nixon and Judge Wiseman show some tendency toward longer sentencing hearings in cases covered under the Sentencing Guidelines. See Exhibit 8 to Appendix C. The specific underlying data reflecting number of hours for each sentencing and plea hearing subject to the Sentencing Guidelines and not subject to the Sentencing Guidelines are on file with the Clerk's Office.

<sup>5</sup> In 1985, the three active District Judges held 58 civil trials and 17 criminal trials. In 1991, the same three active District Judges held 30 civil trials and 36 criminal trials. In 1992, with the addition of Judge Echols in April of that year, the four active District Judges held 46 civil trials and 32 criminal trials. See Exhibit 2 to this Appendix for the number of civil and criminal trials held each year before each active District Judge between 1985 and 1992.

<sup>6</sup> During almost all of the study period between 1985 and 1992, the Court consisted of the same three active District Judges and the same two Magistrate Judges. Judge Echols took the bench April 20, 1992, so, for the last eight months of 1992, the data includes trials and time in Court for the four active District Judges.

the last half of the 1980s, with predicable (and predicted) effects upon criminal case and hour loads. In 1986 and 1987, the Comprehensive Fine Enforcement Act and the Criminal Fine Improvements Act, respectively, were enacted, effecting significant changes in sentencing law and procedures, particularly in the areas of fines and forfeiture. The Comprehensive Crime Control Act of 1984 contained within it provisions that ultimately led to the promulgation of the Federal Sentencing Guidelines, effective November 1, 1987. The year 1986 also saw the enactment of several statutes containing mandatory minimum sentences for violation of certain provisions controlling possession and use of firearms, and certain drug offenses. See, e.g., 21 U.S.C. § 841(B)(1)(a); 21 U.S.C. § 848(d). In addition, the availability of forfeiture under the Racketeer Influenced and Corrupt Organizations statute (RICO), certain drug statutes, and the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) all considerably increased the stakes in certain types of proceedings. All of these changes, singly and sometimes in combination, have reportedly discouraged guilty pleas, and may have resulted in an increased percentage of defendants going to trial because the defendants have had little to lose by doing so.

Moreover, in 1989, former Attorney General Richard Thornburgh, in what has become popularly known as the "Thornburgh memo," established an internal Department of Justice policy, in effect in all United States Attorney's Offices, which directs federal prosecutors to charge offenses that "honestly reflect the totality and seriousness" of the defendant's "offense conduct" behavior under the Guidelines. This directive in turn triggers certain features of the Guidelines that reduce the discretion of the sentencing court and correspondingly enhance the Guideline range of sentence by making less relevant to sentencing any dismissal of a portion of the charges that might occur in reaching a negotiated plea. The most important determinant of a sentence has thus become the initial charges, which lie exclusively in the realm, not of the sentencing judge, but rather of the prosecutor (and of the Grand Jury). See Thornburgh Memo of March 13, 1989, Department of Justice Manual, § 9-27A.300, contained in Exhibit 3 to this Appendix. The policy, therefore, makes it more difficult, once a defendant is indicted, for prosecutors and defense counsel to arrive at a guilty plea under which it is possible to obtain a sentence more favorable than a defendant might obtain by going to trial.

This District, historically and particularly for the decade 1981 through 1991, under former United States Attorney Joe B. Brown, has been a district in which plea bargaining has been used with some frequency. So-called Rule 11(e)(1)(C) pleas (containing fixed or "capped" penalties which the sentencing judge could either accept or reject, but not

modify)<sup>7</sup> could be arrived at by agreement between prosecutor and defense counsel. Although precise statistics detailing the nature and type of these charge and plea phenomena are not available, both former United States Attorney Brown and the current United States Attorney Ernest W. Williams, who assumed his office in early 1992, as well as Assistant United States Attorneys employed under both men, and members of the criminal defense bar agree that Mr. Williams has instituted policies that significantly change prevailing prosecutorial policies in several regards.

For example, upon taking office, Mr. Williams announced that his office would no longer engage in pleas under Rule 11(e)(1)(C) of the Federal Rules of Criminal Procedure, except on extremely rare occasions. Mr. Williams explained his new policy as an effort to reallocate the proper institutional roles within the criminal justice system to the respective institutional branches to which these roles belong. He believes that the executive branch should not tie the hands of the judiciary by submitting agreed pleas under Rule 11(e)(1)(C), which the judge may only accept or reject, but may not modify. Mr. Williams has stated that his policy, which is similar to policies already in effect in some other, and indeed in a growing number of United States District Courts, will permit judges to exercise more discretion. Others have criticized this policy as contrary to the Rules of Criminal Procedure, which presumably reflect a congressional policy that such pleas be an available tool in certain situations. Mr. Williams has acknowledged that there may be rare instances in which he would personally approve a Rule 11(e)(1)(C) plea. Nevertheless, it is anticipated a resultant drop in Rule 11(e)(1)(C) pleas will continue to increase the percentage of defendants choosing to go to trial, because less favorable sentences (or at least sentences lacking the guarantees available under Rule 11(e)(1)(C)) are likely to be available.

A second new policy instituted by the United States Attorney's office since the beginning of 1992, is the introduction of more rigid guidelines according to which Assistant U.S. Attorneys decide whether certain types of cases are to be prosecuted. For example, in the instance of a drug offense in which a firearm is employed, Mr. Williams has indicated that a greater percentage of such cases will probably be prosecuted in federal court than in the past when such cases were prosecuted primarily under the aegis of the local District Attorney. Under former United States Attorney Brown, with the encouragement of then Chief Judge Wiseman, a cooperative policy between the Davidson County District Attorney's Office and the United States Attorney's Office had employed a flexible set of guidelines to decide when federal interests were sufficiently invoked to warrant prosecuting drug cases in the District court. Those former guidelines are attached as Exhibit 4 to this Appendix. Mr. Williams' guidelines, while seemingly

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<sup>7</sup> See Rule 11(e)(1)(C) of the Federal Rules of Criminal Procedure, and compare with Rule 11(e)(1)(B), under which one or more features of the sentence are left to the discretion of the Judge.

motivated by the same policy concerns, apparently use more expressly and less flexibly stated criteria.

Mr. Williams has also expressed his belief that there should be more gun and drug prosecutions in the Middle District of Tennessee, and that there should be a larger corps of Assistant United States Attorneys in this District, based on a consideration of its population alone. For example, the Western District of Tennessee has a smaller population, comprising only 21% of the state, but there were 31 Assistant United States Attorneys in the Western District in 1992. The Middle District has 35% of the state's population and had only 19 Assistants in 1992.

The net effect of the interplay of national and local policies has been a dramatic increase in the number of criminal cases going to trial in this District.

### III. Unmeasured Docket Pressures

There may also be unmeasured impacts on the criminal docket. For instance, the workload of the Probation Office has become both more complex and intense as a result of the Sentencing Guidelines. In addition, the new provisions relating to violations of probation and supervised release have not yet resulted in measurable data. However, the penalties for violation of probation or parole have been made more severe and it is anticipated that there will be an increase in the number and length of probation and supervised release violation hearings.

## **EXHIBIT 1 TO APPENDIX D**

### **TYPES OF FELONY CASES FILED**

**From July 1, 1984, through June 30, 1992**

The attached chart reflects the number and type of felony cases filed in each statistical year 1985 through 1992. The attached chart does not reflect criminal felony cases transferred into this District; it only reflects the felony cases originally filed in this District. It includes felony cases rather than individual defendants.<sup>1</sup> In calendar year 1991 and 1992, the average number of defendants per criminal case (including both felonies and misdemeanors) was less than 1.4, and more than 75% of all criminal cases included only one defendant.

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<sup>1</sup> This District has historically had a low incidence of multiple defendant criminal cases. For instance, in calendar years 1991 and 1992, the average number of defendants per criminal case (including both felonies and misdemeanors) was less than 1.4, and more than 75% of all criminal cases included only one defendant.

**NUMBER OF FELONY CASES FILED BY OFFENSE**

**SY 1984 - SY 1992**

Statistical Year	Immigration	Embezzlement	Weapons	Escape	Burglary /Larceny	Drugs	Forgery/ Counterfeiting	Fraud	Homicide/ Assault	Robbery	Other	TOTAL
1992	0	6	28	5	17	33	13	47	2	22	23	196
1991	3	16	30	7	17	32	14	48	1	36	29	233
1990	0	14	23	8	19	24	24	46	2	22	22	204
1989	0	17	3	24	5	26	15	18	57	7	17	189
1988	0	18	8	11	5	28	14	21	47	7	15	174
1987	0	16	4	25	3	35	10	28	68	5	12	206
1986	0	24	14	20	6	28	13	31	46	8	18	208
1985	0	21	7	22	4	31	7	39	36	7	11	185
1984	0	17	8	30	3	26	11	46	52	6	11	210

**EXHIBIT 2 TO APPENDIX D**

**NUMBER OF CIVIL AND CRIMINAL TRIALS  
1985-1992**

The attached chart reflects the number of civil trials and the number of criminal trials held by each active District Judge from 1985 through 1992. This chart does not reflect the time spent in Court on criminal or civil trials or other proceedings. For data on the time spent in Court during the same years, see Exhibit 8 to Appendix C. The attached chart only reflects the raw number of trials held each year for each active District Judge.

**NUMBER OF CIVIL AND CRIMINAL TRIALS**  
1985 - 1992

YEAR	JUDGE NIXON		JUDGE WISEMAN		JUDGE HIGGINS		JUDGE ECHOLS		TOTAL	
	Civil	Criminal	Civil	Criminal	Civil	Criminal	Civil	Criminal	Civil	Criminal
1992	11	10	12	11	10	9	13	2	46	32
1991	8	12	7	11	15	13			30	36
1990	18	5	15	4	17	12			50	21
1989	10	5	14	7	23	9			47	21
1988	23	2	17	6	23	5			63	13
1987	16	9	25	4	20	2			61	15
1986	12	6	22	0	17	4			51	10
1985	16	3	16	3	26	11			58	17

**EXHIBIT 3 TO APPENDIX D**

**THORNBURGH MEMO**

The attached section of the United States Department of Justice Manual contains what has been referred to as the "Thornburgh memo," which is the March 13, 1989, memorandum of former U.S. Attorney General Richard Thornburgh on plea bargaining under the Sentencing Reform Act.

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**9-27A.300 ANNOTATION: ATTORNEY GENERAL'S  
MEMORANDUM RE PLEA BARGAINING UNDER THE  
SENTENCING REFORM ACT**

March 13, 1989

MEMORANDUM

TO: Federal Prosecutors

FROM: Dick Thornburgh  
Attorney General

SUBJECT: Plea Bargaining Under The Sentencing Reform Act

In January, the Supreme Court decided Mistretta v. United States and upheld the sentencing guidelines promulgated by the Sentencing Commission pursuant to the Sentencing Reform Act of 1984. The Act was strongly supported by the Department of Justice, and the Department has defended the guidelines since they took effect on November 1, 1987. Under these guidelines, it is now possible for federal prosecutors to respond to three problems that plagued sentencing prior to their adoption: 1) sentencing disparity; 2) misleading sentences which were shorter than they appeared as a result of parole and unduly generous "good time" allowances; and 3) inadequate sentences in critical areas, such as crimes of violence, white collar crime, drug trafficking and environmental offenses. It is vitally important that federal prosecutors understand these guidelines and make them work. Prosecutors who do not understand the guidelines or who seek to circumvent them will undermine their deterrent and punitive force and will recreate the very problems that the guidelines are expected to solve.

This memorandum cannot convey all that federal prosecutors need or should want to know about how to use the guidelines, and it is not intended to invalidate more specific policies which are consistent with this statement of principles and may have been adopted by some litigating divisions to govern particular offenses. This memorandum does, however, set forth basic departmental policies to which all of you will be expected to adhere. The Department consistently articulated these policies during the drafting of the guidelines and the period in which their constitutionality was tested. Compliance with these policies is essential if federal criminal law is to be an effective deterrent and those who violate the law are to be justly punished.

Plea BargainingCharge Bargaining

Charge bargaining takes place in two settings, before and after indictment. Consistent with the Principles of Federal Prosecution in Chapter 27 of Title 9 of the United States Attorneys' Manual, a federal prosecutor should initially charge the most serious, readily provable offense or offenses consistent with the defendant's conduct. Charges should not be filed simply to exert leverage to induce a plea, nor should charges be abandoned in an effort to arrive at a bargain that fails to reflect the seriousness of the defendant's conduct.

Whether bargaining takes place before or after indictment, the Department policy is the same: any departure from the guidelines should be openly identified rather than hidden between the lines of a plea agreement. It is inevitable that in some cases it will be difficult for anyone other than the prosecutor and the defendant to know whether, prior to indictment, the prosecutor bargained in conformity with the Department's policy. The Department will monitor, together with the Sentencing Commission, plea bargaining, and the Department will expect plea bargains to support, not undermine, the guidelines.

Once prosecutors have indicted, they should find themselves bargaining about charges which they have determined are readily provable and reflect the seriousness of the defendant's conduct. Should a prosecutor determine in good faith after indictment that, as a result of a change in the evidence or for another reason (e.g., a need has arisen to protect the identity of a particular witness until he testifies against a more significant defendant), a charge is not readily provable or that an indictment exaggerates the seriousness of an offense or offenses, a plea bargain may reflect the prosecutor's reassessment. There should be a record, however, in a case in which charges originally brought are dropped.

Sentence Bargaining

There are only two types of sentence bargains. Both are permissible, but one is more complicated than the other. First, prosecutors may bargain for a sentence that is within the specified guideline range. This means that when a guideline range is 18-24 months, you have discretion to agree to recommend a sentence of 18 to 20 months rather than to argue for a sentence at the top of the range. Similarly, you may agree to recommend a downward adjustment of two levels for acceptance of responsibility if you conclude in good faith that the defendant is entitled to the adjustment.

Second, you may seek to depart from the guidelines. This type of sentence bargain always involves a departure and is more complicated than a bargain

involving a sentence within a guideline range. Departures are discussed more generally below.

Department policy requires honesty in sentencing; federal prosecutors are expected to identify for U.S. District Courts departures when they agree to support them. For example, it would be improper for a prosecutor to agree that a departure is in order, but to conceal the agreement in a charge bargain that is presented to a court as a *fait accompli* so that there is neither a record of nor judicial review of the departure.

In sum, plea bargaining, both charge bargaining and sentence bargaining, is legitimate. But, such bargaining must honestly reflect the totality and seriousness of the defendant's conduct and any departure to which the prosecutor is agreeing, and must be accomplished through appropriate guideline provisions.

#### Readily Provable Charges

The basic policy is that charges are not to be bargained away or dropped, unless the prosecutor has a good faith doubt as to the government's ability readily to prove a charge for legal or evidentiary reasons. It would serve no purpose here to seek to further define "readily provable." The policy is to bring cases that the government should win if there were a trial. There are, however, two exceptions.

First, if the applicable guideline range from which a sentence may be imposed would be unaffected, readily provable charges may be dismissed or dropped as part of a plea bargain. It is important for you to know whether dropping a charge may affect a sentence. For example, the multiple offense rules in Part D of Chapter 3 of the guidelines and recent changes to the relevant conduct standard set forth in 1B1.3(a)(2) will mean that certain dropped charges will be counted for purposes of determining the sentence, subject to the statutory maximum for the offense or offenses of conviction. It is vital that federal prosecutors understand when conduct that is not charged in an indictment or conduct that is alleged in counts that are to be dismissed pursuant to a bargain may be counted for sentencing purposes and when it may not be. For example, in the case of a defendant who could be charged with five bank robberies, a decision to charge only one or to dismiss four counts pursuant to a bargain precludes any consideration of the four uncharged or dismissed robberies in determining a guideline range, unless the plea agreement included a stipulation as to the other robberies. In contrast, in the case of a defendant who could be charged with five counts of fraud, the total amount of money involved in a fraudulent scheme will be considered in determining a guideline range even if the defendant pleads guilty to a single count and there is no stipulation as to the other counts.

Second, federal prosecutors may drop readily provable charges with the specific approval of the United States Attorney or designated supervisory level official for reasons set forth in the file of the case. This exception recognizes that the aims of the Sentencing Reform Act must be sought without ignoring other, critical aspects of the federal criminal justice system. For example, approval to drop charges in a particular case might be given because the United States Attorney's office is particularly overburdened, the case would be time-consuming to try, and proceeding to trial would significantly reduce the total number of cases disposed of by the office.

To make guidelines work, it is likely that the Department and the Sentencing Commission will monitor cases in which charges are dropped. It is important, therefore, that federal prosecutors keep records justifying their decisions not to go forward with readily provable offenses.

#### Departures Generally

In Chapter 5, Part K of the guidelines, the Commission has listed departures that may be considered by a court in imposing a sentence. Some depart upwards and others downwards. Moreover, 5K2.0 recognizes that a sentencing court may consider a departure that has not been adequately considered by the Commission. A departure requires approval by the court. It violates the spirit of the guidelines and Department policy for prosecutors to enter into a plea bargain which is based upon the prosecutor's and the defendant's agreement that a departure is warranted, but that does not reveal to the court the departure and afford an opportunity for the court to reject it.

The Commission has recognized those bases for departure that are commonly justified. Accordingly, before the government may seek a departure based on a factor other than one set forth in Chapter 5, Part K, approval of United States Attorneys or designated supervisory officials is required, after consultation with the concerned litigating Division. This approval is required whether or not a case is resolved through a negotiated plea.

#### Substantial Assistance

The most important departure is for substantial assistance by a defendant in the investigation or prosecution of another person. Section 5K1.1 provides that, upon motion by the government, a court may depart from the guidelines and may impose a non-guideline sentence. This departure provides federal prosecutors with an enormous range of options in the course of plea negotiations. Although this departure, like all others, requires court approval, prosecutors who bargain in good faith and who state reasons for recommending a departure should find that judges are receptive to their recommendations.

**Stipulations of Fact**

The Department's policy is only to stipulate to facts that accurately represent the defendant's conduct. If a prosecutor wishes to support a departure from the guidelines, he or she should candidly do so and not stipulate to facts that are untrue. Stipulations to untrue facts are unethical. If a prosecutor has insufficient facts to contest a defendant's effort to seek a downward departure or to claim an adjustment, the prosecutor can say so. If the presentence report states facts that are inconsistent with a stipulation in which a prosecutor has joined, it is desirable for the prosecutor to object to the report or to add a statement explaining the prosecutor's understanding of the facts or the reason for the stipulation.

Recounting the true nature of the defendant's involvement in a case will not always lead to a higher sentence. Where a defendant agrees to cooperate with the government by providing information concerning unlawful activities of others and the government agrees that self-incriminating information so provided will not be used against the defendant, section 1B1.8 provides that the information shall not be used in determining the applicable guideline range, except to the extent provided in the agreement. The existence of an agreement not to use information should be clearly reflected in the case file, the applicability of section 1B1.8 should be documented, and the incriminating information must be disclosed to the court or the probation officer, even though it may not be used in determining a guideline sentence.

**Written Plea Agreements**

In most felony cases, plea agreements should be in writing. If they are not in writing, they always should be formally stated on the record. Written agreements will facilitate efforts by the Department and the Sentencing Commission to monitor compliance by federal prosecutors with Department policies and the guidelines. Such agreements also avoid misunderstandings as to the terms that the parties have accepted in particular cases.

**Understanding the Options**

A commitment to guideline sentencing in the context of plea bargaining may have the temporary effect of increasing the proportion of cases that go to trial, until defense counsel and defendants understand that the Department is committed to the statutory sentencing goals and procedures. Prosecutors should understand, and defense counsel will soon learn, that there is sufficient flexibility in the guidelines to permit effective plea bargaining which does not undermine the statutory scheme.

For example, when a prosecutor recommends a two level downward adjustment for acceptance of responsibility (e.g., from level 20 to 18), judicial

acceptance of this adjustment will reduce a sentence by approximately 25%. If a comparison is made between the top of one level (e.g., level 20) and the bottom of the relevant level following the reduction (e.g., level 18), it would show a difference of approximately 35%. At low levels, the reduction is greater. In short, a two level reduction does not mean two months. Moreover, the adjustment for acceptance of responsibility is substantial, and should be attractive to defendants against whom the government has strong cases. The prosecutor may also cooperate with the defendant by recommending a sentence at the low end of a guideline range, which will further reduce the sentence.

It is important for prosecutors to recognize while bargaining that they must be careful to make all appropriate Chapter Three adjustments—e.g., victim related adjustments and adjustments for role in the offense.

#### Conclusion

With all available options in mind, and with full knowledge of the availability of a substantial assistance departure, federal prosecutors have the tools necessary to handle their caseloads and to arrive at appropriate dispositions in the process. Honest application of the guidelines will make sentences under the Sentencing Reform Act fair, honest, and appropriate.

**EXHIBIT 4 TO APPENDIX D**

**GUIDELINES FOR REQUEST BY STATE AUTHORITIES  
FOR FEDERAL PROSECUTION**

Attached is the form developed by former United States Attorney Joe B. Brown for requests from state authorities for federal investigation and/or prosecution. This form is no longer used in this District.

\_\_\_\_\_  
Date

To: Joe B. Brown  
United States Attorney  
Middle District of Tennessee  
879 United States Courthouse  
Nashville, TN 37203  
615-736-5151

From: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_

Re: Request from State Authorities for  
Federal Investigation/Prosecution

(1) This request is made for one or more of the reasons marked below:

\_\_\_\_\_ Conviction in Federal Court will yield results  
(i.e., mandatory prison terms, forfeitures, etc.)  
which are unavailable in State Court.

\_\_\_\_\_ The case involves a significant or targeted  
violator.

\_\_\_\_\_ The matter appears appropriate for consideration  
as a Federal Drug Task Force case, as a full  
investigation will require multi-agency-  
jurisdictional activity.

\_\_\_\_\_ Other. State succinctly other reason for request.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- (2) The District Attorney General with primary state jurisdiction over this matter has been notified of this request, and has been provided with a copy.

Person contacted: \_\_\_\_\_

Judicial District of person contacted: \_\_\_\_\_

Telephone number of person contacted: \_\_\_\_\_

Date contacted: \_\_\_\_\_

Recommendation: \_\_\_\_\_ Agrees \_\_\_\_\_ Disagrees

If disagrees, reason for disagreement: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- (3) List all offenses involved in this matter and give the name, jurisdiction, and nature of offense of any matter related hereto that has been indicted in another jurisdiction.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- (4) Case Synopsis:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- (5) Copies of all affidavits, warrants, reports, or indictments pertinent to the case are enclosed.

## **APPENDIX E**

### **ASSESSMENT OF PRISONER LITIGATION**

Because cases filed by prisoners comprise a significant portion of the caseload of this District, a committee of the Advisory Group was charged with assessing the prisoner litigation in this District. In this regard, "prisoner litigation" included prisoner civil rights cases, habeas corpus petitions, motions to vacate federal sentences, and a very small number of miscellaneous cases filed by prison inmates. Although prisoner case filings vary from year to year, there was a 58% increase in prisoner filings between statistical year 1984 and statistical year 1992. See Exhibit 1 to this Appendix for the filing trends in prisoner cases from 1984 through 1992.

Some delay is inherent in prisoner litigation that is prosecuted by unrepresented, untutored plaintiffs. The Court must winnow out meritorious claims from a significant volume of insubstantial, and even frivolous, cases. This District addresses the challenge by heavy reliance upon Magistrate Judges and the Court's support staff, who appear to handle these responsibilities with a commendable sensitivity to the need to safeguard access to the courts. At the same time, they strive to weed out frivolous cases as soon as possible, consistent with due process, and are thoughtful about how that might be better accomplished. For example, to facilitate more efficient processing of the cases, Magistrate Judge Haynes has authored a lengthy, looseleaf manual that covers the substantive legal issues encountered in most prisoner litigation. Judge Haynes periodically updates this manual to reflect changes in the law. Though intended for the internal use of the Court, other courts have learned of this valuable resource, and copies have been shared upon request.

The Advisory Group believes that the Court is using its current resources at near maximum efficiency. See Exhibit 2 to this Appendix for a compilation of the prisoner cases pending as of the beginning of 1991, opened and closed during 1991, and pending as of the end of 1991.

After initial review by the pro se law clerk of cases filed in forma pauperis (IFP), the District Judge determines if the case should proceed IFP and, if so, refers the case to a Magistrate Judge for consideration of whether the case is frivolous or malicious

under 28 U.S.C. § 1915(d).<sup>1</sup> The current mechanism for initial review appears to be adequate. During the years 1989 and 1991, between 10% and 14% of the requests to proceed IFP were rejected. A significant number of those putative plaintiffs did not pay the required filing fee and their cases were never filed. See Exhibit 3 to this Appendix.<sup>2</sup>

The current management of prisoner cases is characterized by an unusually high degree of judicial involvement. In many cases, discovery is not permitted until after there has already been a preliminary, in-court judicial inquiry, with the plaintiff present, to determine that the case includes colorable claims. Many of the pretrial conferences and other pretrial procedures appropriate to non-prisoner cases do not work well where plaintiffs are usually unrepresented by counsel and cannot easily attend court proceedings.

The Advisory Group found that the lack of personnel inevitably contributes to delays in prisoner litigation. Delays result from the extensive responsibilities assumed by the Magistrate Judges in this District, not just for prisoner litigation, but for other civil and criminal cases. Absent additional appointment of law clerks to assist Magistrate Judges, additional pro se law clerk staff and/or appointment of additional Magistrate Judges in this District, these delays are likely to persist. The Advisory Group identified several areas in which expanded resources would decrease delay in prisoner litigation. First, the Advisory Group recommends the appointment of a third Magistrate Judge for this District to ease the burden and decrease delays in prisoner litigation. See also Section IV(B)(4) and Section VIII(A)(2)(b) of the Advisory Group Report. Second, the Advisory Group recommends that the Magistrate Judges consider the option of hiring a second law clerk rather than a secretary if appropriate to the needs of that Magistrate Judge. Third, the Advisory Group recommends that, as the caseload justifies, the Clerk

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<sup>1</sup> The decision of the United States Supreme Court in Hudson v. McMillian, 503 U.S. 1, 112 S.Ct. 995, 117 L.Ed.2d 156 (1992), may reduce the need for some frivolity hearings in cases in which prisoners allege physical abuse. In Hudson, the Court clarified that such allegations state a claim for relief under the Eighth Amendment, even if the plaintiff sustained no serious injuries. As a result of Hudson, it should be possible for the Court to consider any case alleging physical abuse to be non-frivolous, without having to hold a hearing for that purpose.

<sup>2</sup> Once the Court requires full or partial payment of a filing fee, it cannot sua sponte dismiss the action as frivolous under 28 U.S.C. § 1915(d). Clark v. Ocean Brand Tuna, 974 F.2d 48 (6th Cir. 1992). In those cases, the Court must direct that summons issue and allow the plaintiff to amend the complaint before dismissing the action. Therefore, the Court must weigh the benefits of discouraging frivolous litigation by imposing a full or partial filing fee against the prospect of not having available the mechanism to determine frivolity under section 1915(d).

obtain authorization for a second pro se law clerk.<sup>3</sup> Finally, the Advisory Group recommends that the participation on the civil appointments panel be expanded through efforts by the Court and the Nashville Bar Association so that appointments of counsel can be made more expeditiously and the burden of appointment may be spread more evenly among the bar. Correlatively, the Advisory Group recommends that the Court consider offering continuing legal education programs to members of the bar to assist attorneys in prisoner representation and that the manual, authored by Magistrate Judge Haynes, be made available as a reference for pro bono counsel appointed to such cases.

The Advisory Group could identify only one procedural change involving consolidation of related cases that would enhance the processing of prisoner litigation. There are instances in which cases raising the same issue are pending simultaneously before different judicial officers in this district. For example, several pro se litigants may separately challenge the legality of a particular policy or procedure at a given institution. The Court lacks a mechanism for identifying these cases for purposes of possible consolidation. The result is some duplication of effort, as well as the potential for inconsistent adjudications. In the majority of prisoner cases, the State Attorney General represents the defendants and should be aware of the pendency of related claims before difference Judges. So, too, should counsel for the Legal Department of the Government of Metropolitan Nashville-Davidson County, who represent Nashville Jail officials, claims against whom account for the second largest group of prisoner filings.

The Advisory Group recommends that the Court consider including in the orders that directs that process be issued a provision that the defendants, after making a reasonable effort, identify any related cases of which they are aware.<sup>4</sup> However, given the nature of pro se pleadings, the salient issues in a case are not always evident at the time of service and it will often be difficult for defendants to identify related cases at that stage. The order should, therefore, require defendants in such cases to inform the Court of the pendency of related cases at the time of filing of the responsive pleading or at the time of filing a dispositive motion. See Exhibit 4 to this Appendix for proposed wording of such an order.

The Court has previously been unable to persuade litigants to consent to alternative dispute resolution (ADR) programs in prisoner cases. Adoption of the ADR plan and local rule proposed by the Advisory Group would address this problem by authorizing

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<sup>3</sup> The current standard for authorization for a pro se law clerk is 300 prisoner filings per year. The Advisory Group understands that lowering the threshold number of filings is under consideration. In statistical year (SY) 1991 (July 1, 1990, through June 30, 1991), there were 524 prisoner filings, a figure that was rapidly approaching the level of 600 filings to justify two pro se law clerks. However, for no explicable reason, the prisoner filings in SY 1992 decreased to 429.

<sup>4</sup> See Rule 42(a) of the Federal Rules of Civil Procedure.

referral for non-binding ADR provided by the Court, with or without the parties' consent. Only experience will reveal the extent to which ADR will prove helpful in resolving prisoner litigation.

This District was one of the first districts in the country to vigorously explore the use of prison grievance procedures, pursuant to the Civil Rights of Institutionalized Persons Act (CRIPA), 28 U.S.C. § 1997(e). The Tennessee Department of Correction grievance procedure was conditionally certified for a period of time and it is attempting to qualify for final certification. However, court officials, as well as attorneys familiar with prisoner litigation, believe that CRIPA certification, even if achieved, will have little effect on the avoidance of prisoner litigation, since the conflicts giving rise to litigation are typically not grievable under state policy. Even for those issues that are grievable, the general view is that few would-be litigants would be successfully diverted by the grievance process.

The Advisory Group recommends that the Court consider methods to encourage litigants in prisoner cases to consent to proceed before the Magistrate Judge, pursuant to 28 U.S.C. § 636(c). Significant savings in time and cost would be realized if parties in prisoner cases took advantage of this statutory alternative. Given the substantial involvement of the Magistrate Judges in prisoner cases, giving final effect to their findings would significantly increase the efficiency with which such cases are processed.

## **EXHIBIT 1 TO APPENDIX E**

### **Prisoner Filings From 1984 through 1992**

The attached chart reflects the number of prisoner cases filed in statistical years 1984 (July 1, 1993, through June 30, 1994) through statistical year 1992. For the purposes of this compilation, prisoner cases include civil rights cases filed by prisoners, habeas corpus cases filed by prisoners, motions to vacate federal sentences, and miscellaneous prisoner cases. The chart shows a steady and dramatic increase in prisoner filings from 1984 through 1991, as well as an inexplicable decrease in prisoner filings between 1991 and 1992.

NUMBER OF PRISONER CASES FILED  
SY 1984 - SY 1992

Statistical Year	Number of Prisoner Cases Filed
1992	429
1991	524
1990	518
1989	411
1988	375
1987	367
1986	446
1985	390
1984	271

## **EXHIBIT 2 TO APPENDIX E**

### **Prisoner Cases Pending as of the Beginning and End of Calendar Year 1991**

The attached charts reflect the prisoner cases by category (i.e., civil rights, state habeas corpus, motions to vacate federal sentences, and miscellaneous prisoner cases). For each category of prisoner cases, the number of cases pending before each District Judge (and each Magistrate Judge when the case was before the Magistrate Judge on consent) as of January 1, 1991, and as of December 31, 1991. The charts further reflect the number of prisoner cases closed within six months of filing, between six months and one year after filing, between one and two years after filing, and over two years after filing.

**I. PRISONER CIVIL RIGHTS CASES**  
**Nature of Suit CODE: 550 (1983's)**

PENDING FOR ALL JUDGES AS OF 1/1/91:	273
OPENED FOR ALL JUDGES IN 1991:	309
CLOSED FOR ALL JUDGES IN 1991:	286
PENDING AS OF 12/31/91:	296

<b>NUMBER OF 1991 CLOSURES BY JUDGE AND AGE (at time of closure)</b>					
JUDGE	LESS THAN 6 MONTHS	6 MONTHS TO 1 YEAR	1 YEAR TO 2 YEARS	OVER 2 YEARS	TOTAL PER JUDGE
Wiseman	54	14	10	3	81
Nixon	67	17	23	5	112
Higgins	49	14	23	4	90
Morton			1		1
Sandidge			1	1	2
TOTAL	170	45	58	13	286

<b>NUMBER OF PENDING CASES BY JUDGE AND AGE AS OF 12/31/91</b>					
JUDGE	LESS THAN 6 MONTHS	6 MONTHS TO 1 YEAR	1 YEAR TO 2 YEARS	OVER 2 YEARS	TOTAL PER JUDGE
Wiseman	25	18	20	14	77
Nixon	23	20	38	8	89
Higgins	32	28	31	36	127
Morton	2				2
Sandidge				1	1
TOTAL	82	66	89	59	296

**II. PENDING NON-DEATH HABEAS CORPUS CASES**  
**Nature of Suit CODE: 530 (State)**

PENDING FOR ALL JUDGES AS OF 1/1/91: 56

OPENED FOR ALL JUDGES IN 1991: 109

CLOSED FOR ALL JUDGES IN 1991: 93

PENDING AS OF 12/31/91: 72

<b>NUMBER OF 1991 CLOSURES BY JUDGE AND AGE (at time of closure)</b>					
<b>JUDGE</b>	<b>LESS THAN 6 MONTHS</b>	<b>6 MONTHS TO 1 YEAR</b>	<b>1 YEAR TO 2 YEARS</b>	<b>OVER 2 YEARS</b>	<b>TOTAL PER JUDGE</b>
Wiseman	28	1			29
Nixon	22	4	4	2	32
Higgins	23	6	3		32
<b>TOTAL</b>	<b>73</b>	<b>11</b>	<b>7</b>	<b>2</b>	<b>93</b>

<b>NUMBER OF PENDING CASES BY JUDGE AND AGE AS OF 12/31/91</b>					
<b>JUDGE</b>	<b>LESS THAN 6 MONTHS</b>	<b>6 MONTHS TO 1 YEAR</b>	<b>1 YEAR TO 2 YEARS</b>	<b>OVER 2 YEARS</b>	<b>TOTAL PER JUDGE</b>
Wiseman	14	1	2	1	18
Nixon	14	5	9	1	29
Higgins	7	6	12		25
<b>TOTAL</b>	<b>35</b>	<b>12</b>	<b>23</b>	<b>2</b>	<b>72</b>

prisoner.530

**III. PENDING DEATH HABEAS CORPUS CASES**  
**Nature of Suit CODE: 535 (State)**

PENDING FOR ALL JUDGES AS OF 1/1/91: 9

OPENED FOR ALL JUDGES IN 1991: 2

CLOSED FOR ALL JUDGES IN 1991: 3

PENDING AS OF 12/31/91: 8

NUMBER OF 1991 CLOSURES BY JUDGE AND AGE (at time of closure)					
JUDGE	LESS THAN 6 MONTHS	6 MONTHS TO 1 YEAR	1 YEAR TO 2 YEARS	OVER 2 YEARS	TOTAL PER JUDGE
Wiseman					0
Nixon			1		1
Higgins		1	1		2
Morton					0
TOTAL	0	1	2	0	3

NUMBER OF PENDING CASES BY JUDGE AND AGE AS OF 12/31/91					
JUDGE	LESS THAN 6 MONTHS	6 MONTHS TO 1 YEAR	1 YEAR TO 2 YEARS	OVER 2 YEARS	TOTAL PER JUDGE
Wiseman		1			1
Nixon			2	4	6
Higgins					0
Morton			1		1
TOTAL	0	1	3	4	8

prisoner.535

**IV. PENDING MOTIONS TO VACATE FEDERAL SENTENCE**  
**Nature of Suit CODE: 510**

PENDING FOR ALL JUDGES AS OF 1/1/91: 5

OPENED FOR ALL JUDGES IN 1991: 13

CLOSED FOR ALL JUDGES IN 1991: 12

PENDING AS OF 12/31/91: 6

<b>NUMBER OF 1991 CLOSURES BY JUDGE AND AGE (at time of closure)</b>					
JUDGE	LESS THAN 6 MONTHS	6 MONTHS TO 1 YEAR	1 YEAR TO 2 YEARS	OVER 2 YEARS	TOTAL PER JUDGE
Wiseman	4		1		5
Nixon					0
Higgins	2				2
Morton	4	1			5
<b>TOTAL</b>	<b>10</b>	<b>1</b>	<b>1</b>	<b>0</b>	<b>12</b>

<b>NUMBER OF PENDING CASES BY JUDGE AND AGE AS OF 12/31/91</b>					
JUDGE	LESS THAN 6 MONTHS	6 MONTHS TO 1 YEAR	1 YEAR TO 2 YEARS	OVER 2 YEARS	TOTAL PER JUDGE
Wiseman		1			1
Nixon	1		1		2
Higgins	1	1			2
Morton	1				1
<b>TOTAL</b>	<b>3</b>	<b>2</b>	<b>1</b>		<b>6</b>

prisoner.510

V. MANDAMUS & OTHER MATTERS  
Nature of Suit CODE: 540

PENDING FOR ALL JUDGES AS OF 1/1/91:	0
OPENED FOR ALL JUDGES IN 1991:	1
CLOSED FOR ALL JUDGES IN 1991:	1
PENDING AS OF 12/31/91:	0

Closed by Judge Nixon  
in LESS THAN 6 MONTHS

prisoner.540

### **EXHIBIT 3 TO APPENDIX E**

#### **Report of Fees Paid or Cases not Pursued by Prisoners After Full or Partial Denial of IFP Status**

The attached charts reflects the number of prisoner cases submitted for filing in calendar years 1989, 1990, and 1991, the number of cases in which the Court ordered full or partial payment of the filing fee, the number of plaintiff prisoners who paid the ordered fee, and the number and percentage of prisoner plaintiffs who did not pay the ordered amount.

The data for the attached chart was collected for the calendar years. Therefore, the number of prisoner cases filed during those calendar years does not correspond to the number of prisoner case filings for the statistical years (July 1 through June 30 of the next year) as reflected in Exhibit 1 to Appendix E.

A listing of each case submitted for filing during the study period and orders granting or denying in forma pauperis status is on file in the Clerk's Office.

**REPORT ON FEES PAID OR CASES WITHDRAWN BY PRISONERS  
AFTER FULL OR PARTIAL DENIAL OF IFP STATUS  
MIDDLE DISTRICT OF TENNESSEE**

	<b>Number of Prisoner Cases Submitted for Year</b>	<b>Number of Cases in which Court Ordered Full or Partial Payment</b>	<b>Number of Prisoners who Paid the Ordered Fee</b>	<b>Number of Prisoners who did not Pay Ordered Amount</b>
1989	409	40 (10% of Prisoner Filings)	36	4 (10%)
1990	585	71 (12% of Prisoner Filings)	41	30 (42%)
1991	458	66 (14% of Prisoner Filings)	42	24 (36%)

**EXHIBIT 4 TO APPENDIX E**

**Proposed Order**

The attached, proposed order would direct the defendants in prisoner cases to notify the Court of any cases involving the same facts or issues so that such related cases could be assigned to the same judicial officer.

## ORDER

The defendants are directed to file a statement with the Court listing the name, style, and a very brief description of any cases pending in the United States District Court for the Middle District of Tennessee arising from substantially the same case or controversy as the instant case or involving a significant issue of first impression in this Circuit that is substantially the same as an issue in the instant case. Statements are to be filed by the defendants at the time of filing the answer or other initial responsive pleading and at the time of filing any subsequent dispositive motions. Statements are to be based on the parties' knowledge at the time the statement is filed.

## APPENDIX F

### **STATISTICAL INFORMATION ON THE CONDITION OF THE CIVIL AND CRIMINAL DOCKETS, TRENDS IN FILINGS, AND DEMANDS ON COURT RESOURCES**

#### I. Filing Trends

Each United States District Court generates statistical reports on the number of cases, opened, closed, and transferred, for submission to the Administrative Office of the United States Courts. The Administrative Office then compares overall workload statistics for each judicial district and compares the "workload" for each district court to other judicial districts within the Sixth Circuit and to all United States District Courts. This District also generates internal monthly and annual reports reflecting the number of cases pending, filed and closed for each judge. This information provides a broad overview of the District's caseload.

This District has followed the national trend in civil case filings over the last decade. There was an upward trend in civil case filings through 1985, when this District peaked at a total of 1804 new civil cases.<sup>1</sup> Civil filings decreased by almost 250 civil cases in SY 1986, followed by another similar decrease in SY 1987. In 1988, the filings would have continued at approximately the 1987 level, except for an aberration in this District.<sup>2</sup> Since 1989, there has been an upward trend in civil case filings. In SY 1989, there was an increase of over 100 civil case filings over the SY 1987 level, followed by a light increase in SY 1990. However, there was a decrease of over 100 civil case filings in SY 1991, followed by an increase in SY 1992 of less than one hundred cases. See Exhibit 1 to this Appendix for an overview of the total case filings between 1984 and 1992, and see Exhibit 2 to this Appendix for an overview of the civil case filings between 1984 and 1992.

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<sup>1</sup> Case filings include new cases filed and cases reopened. The statistical years indicated are those twelve month periods beginning July 1, and ending the following June 30th. For instance, statistical year (SY) 1984 includes the twelve month period beginning July 1, 1983, and ending June 30, 1984.

<sup>2</sup> 355 products liability PCB cases, naming the same defendants, were filed in the Columbia Division in SY 1988.

In summary, the civil case filings have increased gradually since the low in SY 1987, but have not returned to the filing level before 1986. The types of civil cases filed have changed significantly between 1984 and 1992. In 1984, 230 Social Security cases were filed, in contrast to 55 in SY 1992. Similarly, 346 cases involving recovery of Veterans Administration overpayments were filed in 1984, and 457 such cases filed in SY 1985, compared to 110 overpayment cases filed in SY 1992, and even fewer such cases filed each of the previous five years. Prisoner case filings have dramatically increased from 271 in SY 1984 to 429 in SY 1992. In SY 1991, prisoner filings were the highest ever in this District, with 524 such cases filed.

Filings in other categories of cases have fluctuated between SY 1984 and SY 1992, with a steady increase of labor, tort and civil rights cases, in contrast to some decrease in contract cases. Typically complex cases, such as copyright, patent, trademark, and antitrust cases, have not increased significantly over the last nine years. The number of civil case filings in each case category between SY 1984 and SY 1992 are included in Exhibit 3 to this Appendix.

Criminal case filings have remained fairly steady over the period of time between SY 1984 and SY 1992, with 210 felony cases filed in SY 1984, as compared to 196 felony cases filed in SY 1992. See Exhibit 4 to this Appendix for an overview of the criminal felony case filings from 1984 to 1992. For a discussion of the historical criminal filings, see Section I of Appendix D and Exhibit 1 to Appendix D.

For calendar year 1991, Judge Wiseman, Judge Nixon, and Judge Higgins were each assigned between 420 and 430 civil cases and between 120 and 130 criminal defendants.<sup>3</sup> Each active District Judge, therefore, averaged 35 civil case assignments per month and 10 criminal defendants per month. As of May of 1992, when the civil cases assignments were spread out among four, rather than three, active District Judges, the average civil case assignment decreased to 26 civil cases per month over the last eight months of the year. In calendar year 1991, Judge Wiseman, Judge Nixon, and Judge Higgins were each assigned an average of 10 criminal defendants per month. Beginning

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<sup>3</sup> Specifically, Judge Wiseman was assigned 420 civil cases, Judge Nixon was assigned 424 cases, and Judge Higgins was assigned 428 civil cases in 1991. The cases assigned to each Judge included not only newly filed cases but also reopened cases and cases reassigned from another Judge. Therefore, of the 420 cases assigned to Judge Wiseman in 1991, 14 were reopened and 5 were transferred from another Judge. Of the 424 cases assigned to Judge Nixon, 30 were reopened and 17 transferred from another Judge. Of the 428 cases assigned to Judge Higgins, 25 were reopened and 4 transferred from another Judge. These cases do not include 155 civil cases (including 17 reopened cases) assigned to Judge Morton.

in June of 1992, the average number of criminal defendants assigned to each active District Judge decreased to 5 per month for the last seven months in calendar year 1992.

## II. Time to Disposition

An important factor in determining whether a district is "staying abreast" of new case filing is to determine the ratio of cases pending at the end of the year to cases terminated during that year. Generally, if the ratio stays constant,<sup>4</sup> the Court is "keeping up." If the ratio increases, the Court is gaining ground and disposing of cases faster than in the past; if the ratio decreases, the court is falling behind. The ratio of pending cases to annual case terminations tends to be a reasonable estimate of the true average duration (or life expectancy of a Court's cases). The ratio gives an average case duration in years; if divided by twelve, the result is the average case duration in months.<sup>5</sup> The statistics on the ratio of pending cases to annual case terminations is contained in Exhibit 5 to this Appendix.

From a macro perspective, it appears that this District is staying abreast of its docket in terms of the overall ratio between cases filed and cases terminated. More cases are disposed of each year than are filed. This statistics reflect favorably on the Court's efficiency.

Another way to look at the momentum of the Court's case docket is to compare the number of cases filed per year to the number of cases terminated during the same year. See Exhibit 6 to this Appendix. From 1980 through 1992, the number of filings each year have slightly exceeded the number of terminations, except for 1990 and 1986, when number of terminations exceeded the number of filings.

These comparison, however, do not reflect the time demands of particular cases. To provide a more meaningful assessment of time to disposition and the relationship between filings, terminations and pending cases, the Federal Judicial Center,

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<sup>4</sup> For example, in 1992, there were 1461 civil cases pending at the end of the year, after 1651 civil cases had been closed during the year. The ratio of cases pending to cases closed was 1 to 1.1, which means that the Court disposed of more cases than remained pending. In 1992, therefore, the Court was not only "staying abreast," it was also gaining ground.

<sup>5</sup> Shapard, J., Federal Judicial Center, "How Case Load Statistics Deceive," May 2, 1991, prepared for use at the Chief Judge's conference in May of 1991.

on behalf of the Advisory Group, prepared a table showing the number of cases filed, terminated and pending with each characteristic data by active District Judge for the period July 1, 1986, through June 30, 1992. See Exhibit 7 to this Appendix. Only limited data was available for Judge Echols since cases assigned to him at filing were not enough to yield meaningful statistics. A second table was prepared showing the same data but by type of case and includes only those case types for which at least 30 cases were filed in the last three years. See Exhibit 8 to this Appendix.

The statistics show that, while the life expectancy of cases has increased somewhat since 1983, the life expectancy of cases in this District approximates twelve months for all civil cases. The statistical information further reveals that, for the most part, nearly three quarters of civil cases are disposed of in the first year. There does not appear to be a significant statistical difference in the ability to terminate cases on a percentage basis among the judges. Although national studies have concluded that case filings between 1971 and 1986 amounted to a serious problem for the federal courts,<sup>6</sup> an examination of the data for the sheer number of filings in this District do not support this conclusion. The filings have been relatively stable in this District during the past decade. The private civil caseload has not grown rapidly in this District nor have the criminal filings increased. The statistics do reveal, however, that certain types of cases take increasingly longer, particularly securities, personal injury, product liability and asbestos cases.<sup>7</sup>

The workload assigned to the Magistrate Judges increased substantially between 1988 and 1991 in the number of preliminary criminal matters, although there was a decrease in such matters held before Magistrate Judges between 1991 and 1992.<sup>8</sup> The number of civil matters assigned to Magistrate Judges increased dramatically between 1988 and 1990, and increased again substantially in 1991. In 1992, the number of civil matters assigned to Magistrate Judges decreased over the 1991 level, but still reflected an increase over the 1990 level. The number and types of matters handled by Magistrate

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<sup>6</sup> Dungworth, T., Rand Corporation, "Statistical Overview of Civil Litigation in the Federal Courts," 1990.

<sup>7</sup> Pursuant to the order of the Judicial Panel on MultiDistrict Litigation, filed July 29, 1991, all asbestos cases pending in this District were transferred to the Eastern District of Pennsylvania.

<sup>8</sup> The decrease in preliminary criminal matters heard before Magistrate Judges between 1991 and 1992 may be attributable to the decrease in criminal case filings over the same period of time.

Judges between 1988 and 1992 are included in Exhibit 9 to this Appendix.<sup>9</sup>

One potential measure of the increased demand on the Court's resources relates to the number of motions pending over six months or bench trials undecided for more than six months. Another indicator of strain on the docket load is the number of older cases, over three years old and over five years old.<sup>10</sup>

The District ranked first among United States District Courts in the number of terminations per judgeship in SY 1990, with an average of 640 terminations per active district judgeship.<sup>11</sup> In SY 1991, the average number of terminations per active District Judge decreased to 493. By the end of the twelve month period ending September 30, 1992, the average number of terminations per active District Judge decreased again to 408, but that calculation included the fourth judgeship, so it reflected a greater number of cases terminated district-wide. Over the last decade, this District has been almost consistently at or within the top third of the courts nationwide in time from filing to disposition.<sup>12</sup> For SY 1992, this District was the 15th most expeditious in resolving cases from filing to disposition. The District has also been consistently within the top half of the Districts Courts between the time cases are at issue and the time cases are tried.

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<sup>9</sup> The statistics reflecting matters assigned to each Magistrate Judge for each year 1988 through 1992 are on file with the Clerk's Office.

<sup>10</sup> Bi-annual listings of cases pending over three years are on file with the Clerk's Office. Pursuant to the Civil Justice Reform Act, each District is also required to compile bi-annual listings of pending motions that have been filed for more than seven months and bench trials that have not been resolved after six months. The first reporting under the CJRA was submitted for data as of September 30, 1991. These reports are on file in the Clerk's Office. Prior to the CJRA reporting requirements, the all District Judges were required to report pending dispositive motions to the Court of Appeals on a quarterly basis.

<sup>11</sup> The total terminations for the District, including those closed by Senior District Judge Morton, are totalled and then divided by three. The Administrative Office of the United States Courts includes the number of active District Judges; it does not include Senior Judges, although the cases assigned to and closed by Senior Judges are included.

<sup>12</sup> The exception was in 1990, when Court ranked with the slowest half of the Courts nationwide. However, that same year, the District ranked the 12th highest in disposition time from issue to trial.

### III. Conclusion

Upon an examination of a variety of statistics, it appears that this District is resolving civil cases expeditiously. The ratio of pending cases to terminated cases consistently shows that the District is terminating more cases than pending cases over the last twelve years. The comparisons between other District Courts has also consistently shown that this District is resolving cases more expeditiously than most District Courts.

**EXHIBIT 1 TO APPENDIX F**

**TOTAL CASE FILINGS**

**1984 - 1992**

The attached graph reflects the trend in total case filings for this District between statistical year 1984 and statistical year 1992. Total case filings include all civil cases filed and reopened and all criminal felony cases. For the graph depicting the trends in civil case filings, see Exhibit 2 to Appendix F. For graph depicting the trend in criminal felony case filings, see Exhibit 4 to Appendix F.

UNITED STATES DISTRICT COURT  
FOR THE  
MIDDLE DISTRICT OF TENNESSEE

Total Case Filings

Year													TOTAL:
1992													1,669
1991													1,633
1990													1,707
1989													1,645
1988													1,852
1987													1,538
1986													1,787
1985													2,011
1984													1,825
1983													1,544
1982													1,515
1981													1,259
1980													978

900 1000 1100 1200 1300 1400 1500 1600 1700 1800 1900 2000 2100 2200

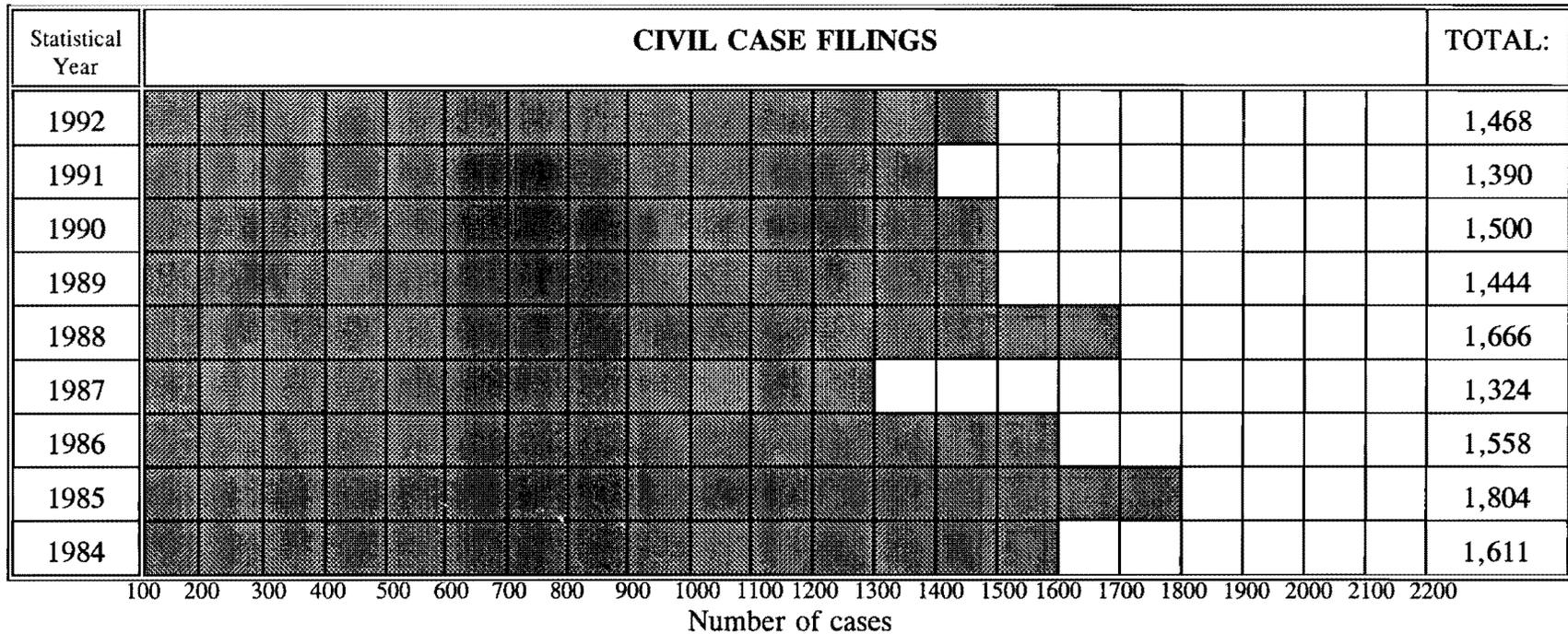
**EXHIBIT 2 TO APPENDIX F**

**CIVIL CASE FILINGS**

**1984 - 1992**

The attached graph reflects the trend in civil case filings for this District between statistical year 1984 and statistical year 1992. For the graph depicting the trends in total case filings, see Exhibit 1 to Appendix F. For graph depicting the trend in criminal felony case filings, see Exhibit 4 to Appendix F.

UNITED STATES DISTRICT COURT  
FOR THE  
MIDDLE DISTRICT OF TENNESSEE



**EXHIBIT 3 TO APPENDIX F**

**TYPES AND NUMBER OF CIVIL CASE FILINGS  
1984 - 1992**

The attached chart reflects the categories of civil cases filed and the number of case filings within each category between statistical year 1984 and statistical year 1992. For these purposes, a statistical year begins on July 1 and ends on June 30. For example, statistical year (SY) 1984 began July 1, 1983, and ended June 30, 1984. The numbers of cases in each category include not only original case filings but also cases that were reopened.

## NUMBER AND CATEGORIES OF CIVIL FILINGS

Statistical Year 1984 - 1992

Year	Social Security	Recovery of Overpayments	Prisoner	Forfeitures and Tax	Real Property	Labor	Contracts	Torts	Copyright, Patent, and Trademark	Civil Rights	Antitrust	Other	Total
1992	55	110	429	67	16	77	162	165	28	221	5	133	1468
1991	66	32	524	69	32	33	151	182	33	158	7	92	1390
1990	49	67	518	68	20	55	187	242	30	165	1	98	1500
1989	92	106	411	52	26	52	233	188	35	140	2	107	1444
1988	42	77	375	25	26	43	223	581	26	134	3	111	1666
1987	85	53	367	39	25	39	257	181	35	128	6	109	1324
1986	109	203	446	59	20	32	231	176	30	131	6	115	1558
1985	101	457	390	70	30	36	235	205	19	128	3	130	1804
1984	230	346	271	66	8	39	202	127	20	177	6	119	1611

**EXHIBIT 4 TO APPENDIX F**

**CRIMINAL FELONY CASE FILINGS**

**1984 - 1992**

The attached graph reflects the trend in criminal felony case filings for this District between statistical year 1984 and statistical year 1992. For the graph depicting the trends in total case filings, see Exhibit 1 to Appendix F. For graph depicting the trend in civil case filings, see Exhibit 2 to Appendix F.

UNITED STATES DISTRICT COURT  
FOR THE  
MIDDLE DISTRICT OF TENNESSEE

Statistical Year	CRIMINAL FELONY CASE FILINGS										TOTAL:
1992											196
1991											243
1990											204
1989											189
1988											174
1987											214
1986											208
1985											185
1984											210

25 50 75 100 125 150 175 200 225 250  
Number of cases

## **EXHIBIT 5 TO APPENDIX F**

### **Ratio of Pending Cases to Terminated Cases**

The attached chart reflects the number of civil cases pending at the end of each year between 1980 and 1992, the number of cases terminated for each of those years, and the ratio of pending cases to terminated cases. When the ratio equals 1.0, the District is closing as many cases as there were cases pending at the end of the year. When the ratio exceeds 1.0, the District is closing more cases during the year than there were pending cases at the end of the year.

## TIME TO DISPOSITION

### Ratio of Pending Cases to Terminated Cases

YEAR	RATIO	NUMBER OF CASES	
		Pending Cases	Terminated Cases
1992	1 : 1.1	1,461	1,651
1991	1 : 1.0	1,418	1,478
1990	1 : 1.4	1,349	1,921
1989	1 : 1.0	1,588	1,612
1988	1 : 1.0	1,552	1,581
1987	1 : 1.1	1,281	1,450
1986	1 : 1.5	1,190	1,829
1985	1 : 1.6	1,232	1,949
1984	1 : 1.4	1,170	1,623
1983	1 : 1.6	971	1,522
1982	1 : 1.6	949	1,488
1981	1 : 1.3	922	1,183
1980	1 : 1.1	846	954

## **EXHIBIT 6 TO APPENDIX F**

### **Ratio of Cases Terminated to Cases Filed**

The attached chart reflects the number of civil cases filed and terminated during each year between 1980 and 1992, and the ratio of the number of cases terminated to the number of cases filed during each year. When the ratio equals 1.0, the District is closing as many cases as there were cases filed. When the ratio exceeds 1.0, the District is closing fewer cases than filings. Finally, when the ratio is less than 1.0, the District is closing more cases than filings.

**Ratio of Terminated Cases to Filed Cases**

YEAR	RATIO	NUMBER OF CASES	
		Case Terminations	Cases Filed
1992	1 : 1.0	1,651	1,669
1991	1 : 1.1	1,478	1,633
1990	1 : 0.9	1,921	1,707
1989	1 : 1.0	1,612	1,645
1988	1 : 1.2	1,581	1,852
1987	1 : 1.1	1,450	1,538
1986	1 : 1.0	1,829	1,787
1985	1 : 1.0	1,949	2,011
1984	1 : 1.1	1,623	1,825
1983	1 : 1.0	1,522	1,544
1982	1 : 1.0	1,488	1,515
1981	1 : 1.1	1,183	1,259
1980	1 : 1.0	954	978

**EXHIBIT 7 TO APPENDIX F**

**CIVIL CASES FILED, TERMINATED, AND PENDING  
BY ACTIVE DISTRICT JUDGE**

**SY 1987 - SY 1992**

The attached table reflects the number of cases filed, number of cases terminated, and number of cases pending at the end of the year for Judge Nixon, Judge Wiseman, and Judge Higgins for the statistical years 1987 through 1992. The table also shows the percentage of cases terminated during those years that were less than one year old, between one and two years old, between two and three years old, and over three years old when they were closed.

**CASES FILED, TERMINATED, AND PENDING  
BY ACTIVE DISTRICT JUDGE  
SY 1987 - 1992**

<b>JUDGE NIXON</b>							
Statistical Year	Filed	Terminated	Pending	Percentage Terminated aged 0-1 yrs.	Percentage Terminated aged 1-2 yrs.	Percentage Terminated aged 2-3 yrs.	Percentage Terminated aged 3 or more yrs.
1992	409	412	393	68.0%	23.3%	5.3%	3.4%
1991	410	383	396	72.8%	17.0%	5.2%	5.0%
1990	433	368	369	71.7%	14.9%	7.3%	6.0%
1989	314	339	304	61.7%	26.3%	7.1%	5.0%
1988	302	329	329	59.3%	23.4%	9.4%	7.9%
1987	321	294	356	71.4%	21.1%	3.4%	4.1%

<b>JUDGE WISEMAN</b>							
Statistical Year	Filed	Terminated	Pending	Percentage Terminated aged 0-1 yrs.	Percentage Terminated aged 1-2 yrs.	Percentage Terminated aged 2-3 yrs.	Percentage Terminated aged 3 or more yrs.
1992	425	424	351	71.2%	19.1%	4.0%	5.7%
1991	400	368	350	73.9%	19.0%	3.5%	3.5%
1990	434	680	318	43.5%	52.4%	2.5%	1.6%
1989	321	369	564	63.7%	27.1%	4.3%	4.9%
1988	650	338	612	62.4%	24.3%	8.9%	4.4%
1987	294	303	300	64.4%	23.4%	7.3%	5.0%

<b>JUDGE HIGGINS</b>							
Statistical Year	Filed	Terminated	Pending	Percentage Terminated aged 0-1 yrs.	Percentage Terminated aged 1-2 yrs.	Percentage Terminated aged 2-3 yrs.	Percentage Terminated aged 3 or more yrs.
1992	422	404	410	69.8%	23.0%	5.0%	2.2%
1991	422	359	392	79.9%	15.0%	3.9%	1.1%
1990	431	375	329	77.9%	14.7%	4.8%	2.7%
1989	326	304	273	77.0%	15.8%	3.6%	3.6%
1988	296	317	251	71.9%	20.5%	6.0%	1.6%
1987	322	284	272	77.1%	21.8%	0.7%	0.4%

## **EXHIBIT 8 TO APPENDIX F**

### **CASES FILED, TERMINATED, AND PENDING BY TYPE OF CASE**

The attached table reflects the same information as included in Exhibit 4 to Appendix F, except that the attached table provides the number of cases filed, the number of cases terminated, and the number of cases pending at the end of the year by type of case. The case categories are those in which at least 30 cases were filed within the last three years in this District. For each case category, the attached table reflects the percentage of cases that were less than one year old, between one and two years old, between two and three years old, and over three years old when they were closed.

Nature-of-suit code - description	Year	Filed	Termi- -nated	Pend ing	Percent Termi-nated at Age			
					0-1 year	1-2 years	2-3 years	3 or more years
550 - Civil Rights: Prisoner	1987	266	283	186	81%	14%	3%	1%
	1988	264	287	163	72%	17%	8%	3%
	1989	281	284	160	81%	12%	4%	4%
	1990	413	329	244	91%	5%	2%	2%
	1991	385	349	280	84%	13%	2%	1%
	1992	309	291	298	71%	23%	3%	2%
440 - Civil Rights: Other	1987	53	41	76	56%	34%	5%	5%
	1988	69	78	67	51%	32%	13%	4%
	1989	84	82	69	71%	20%	2%	7%
	1990	124	82	111	77%	16%	5%	2%
	1991	97	100	108	78%	10%	7%	5%
	1992	124	117	115	68%	25%	7%	0%
190 - Other Contract	1987	184	146	157	73%	15%	6%	5%
	1988	145	163	139	72%	18%	7%	2%
	1989	162	169	132	68%	25%	4%	2%
	1990	123	150	105	71%	20%	5%	4%
	1991	97	99	103	73%	14%	9%	4%
	1992	102	99	106	67%	16%	9%	8%
530 - Habeas Corpus	1987	85	90	36	91%	7%	1%	1%
	1988	76	78	34	90%	6%	3%	1%
	1989	100	101	33	85%	7%	3%	5%
	1990	79	76	36	91%	8%	0%	1%
	1991	127	92	71	91%	8%	1%	0%
	1992	95	101	65	85%	11%	3%	1%
442 - Civil Rights: Jobs	1987	69	61	83	56%	34%	5%	5%
	1988	55	62	76	65%	16%	8%	11%
	1989	53	64	65	58%	20%	13%	9%
	1990	45	60	50	58%	17%	10%	15%
	1991	55	43	62	60%	19%	12%	9%
	1992	90	59	93	64%	22%	8%	5%
863 - Social Security-DIWC	1987	78	52	71	75%	23%	2%	0%
	1988	23	84	10	70%	24%	1%	5%
	1989	68	34	44	97%	3%	0%	0%
	1990	49	54	39	67%	31%	0%	2%
	1991	57	55	41	69%	31%	0%	0%
	1992	38	51	28	80%	18%	0%	2%

Nature-of-suit code - description	Year	Filed	Termi- -nated	Pend ing	0-1 year	1-2 years	2-3 years	3 or more years
350 - Motor Vehicle	1987	40	39	42	67%	28%	3%	3%
	1988	49	46	45	54%	39%	4%	2%
	1989	47	49	43	73%	20%	6%	0%
	1990	50	48	45	63%	29%	4%	4%
	1991	40	42	43	57%	38%	5%	0%
	1992	49	45	47	58%	31%	4%	7%
152 - Recovery of defaulted student loans	1987	8	10	4	100%	0%	0%	0%
	1988	23	22	5	95%	0%	5%	0%
	1989	57	49	13	100%	0%	0%	0%
	1990	29	31	11	97%	0%	0%	3%
	1991	15	20	6	90%	10%	0%	0%
	1992	85	61	30	100%	0%	0%	0%
360 - "Other" Personal Injury	1987	36	46	38	63%	33%	2%	2%
	1988	389	49	378	57%	39%	2%	2%
	1989	53	69	362	42%	57%	1%	0%
	1990	66	390	38	15%	83%	2%	0%
	1991	34	36	36	61%	31%	6%	3%
	1992	27	32	31	53%	31%	9%	6%
890 - Other Statutory Actions	1987	34	40	30	80%	15%	3%	3%
	1988	27	27	30	59%	22%	7%	11%
	1989	27	33	24	58%	36%	3%	3%
	1990	33	33	24	64%	21%	6%	9%
	1991	38	28	34	64%	32%	4%	0%
	1992	43	41	36	83%	10%	2%	5%
110 - Contract: Insurance	1987	45	37	54	68%	27%	3%	3%
	1988	45	51	48	57%	22%	14%	8%
	1989	46	46	48	72%	20%	7%	2%
	1990	38	45	41	56%	33%	7%	4%
	1991	25	28	38	43%	32%	7%	18%
	1992	41	36	43	61%	28%	6%	6%
422 - Bankruptcy Appeals Rule 801	1987	21	31	11	68%	32%	0%	0%
	1988	18	17	12	65%	18%	12%	6%
	1989	31	31	12	94%	6%	0%	0%
	1990	34	28	18	96%	4%	0%	0%
	1991	29	35	12	83%	17%	0%	0%
	1992	32	32	12	97%	3%	0%	0%

Nature-of-suit code - description	Year	Filed	Termi- -nated	Pend ing	0-1 year	1-2 years	2-3 years	3 or more years
365 - Personal Injury Product Liability	1987	21	24	30	50%	38%	8%	4%
	1988	33	29	34	48%	28%	14%	10%
	1989	27	29	32	59%	31%	10%	0%
	1990	23	23	32	52%	26%	17%	4%
	1991	26	30	28	50%	33%	10%	7%
	1992	44	12	60	67%	17%	8%	8%
870 - Taxes	1987	23	33	8	88%	6%	3%	3%
	1988	9	13	4	54%	38%	8%	0%
	1989	31	7	28	86%	0%	0%	14%
	1990	30	36	22	83%	14%	3%	0%
	1991	30	32	20	81%	19%	0%	0%
	1992	33	43	10	81%	16%	2%	0%
791 - ERISA	1987	15	5	18	100%	0%	0%	0%
	1988	15	14	19	64%	7%	14%	14%
	1989	20	17	22	65%	29%	6%	0%
	1990	25	23	24	74%	9%	17%	0%
	1991	19	23	20	61%	26%	4%	9%
	1992	47	27	40	74%	19%	7%	0%
368 - Asbestos	1987	11	9	15	11%	78%	11%	0%
	1988	40	11	44	45%	45%	9%	0%
	1989	5	24	25	58%	38%	4%	0%
	1990	39	6	58	33%	33%	17%	7%
	1991	23	7	74	57%	43%	0%	0%
	1992	1	74	1	14%	61%	4%	22%
140 - Contract: Negotiable Instrument	1987	14	17	12	71%	24%	6%	0%
	1988	17	14	15	71%	21%	7%	0%
	1989	16	19	12	68%	26%	5%	0%
	1990	19	22	9	86%	5%	0%	9%
	1991	24	22	11	86%	9%	5%	0%
	1992	16	13	14	92%	8%	0%	0%
153 - Recovery of veterans benefit overpayment	1987	42	48	7	100%	0%	0%	0%
	1988	44	42	9	98%	2%	0%	0%
	1989	41	42	8	98%	2%	0%	0%
	1990	28	31	5	100%	0%	0%	0%
	1991	10	13	2	100%	0%	0%	0%
	1992	19	17	4	100%	0%	0%	0%

Nature-of-suit code - description	Year	Filed	Termi- nated	Pend- ing	0-1 year	1-2 years	2-3 years	3 or more years
510 - Vacate Sentence	1987	8	6	3	83%	17%	0%	0%
	1988	14	10	7	100%	0%	0%	0%
	1989	17	20	4	95%	5%	0%	0%
	1990	18	13	9	100%	0%	0%	0%
	1991	11	16	4	88%	13%	0%	0%
	1992	21	18	7	94%	6%	0%	0%
690 - Miscellaneous Forfeiture and Penalty	1987	9	8	11	75%	25%	0%	0%
	1988	7	16	2	63%	38%	0%	0%
	1989	17	8	11	100%	0%	0%	0%
	1990	18	16	13	88%	6%	0%	6%
	1991	16	8	21	50%	50%	0%	0%
	1992	14	23	12	78%	17%	4%	0%
370 - Fraud; Truth in Lending	1987	14	9	15	67%	22%	11%	0%
	1988	11	19	7	58%	32%	11%	0%
	1989	6	8	5	88%	13%	0%	0%
	1990	27	26	6	96%	4%	0%	0%
	1991	10	6	10	67%	17%	0%	17%
	1992	6	10	6	60%	40%	0%	0%
840 - Trademark	1987	12	8	11	88%	13%	0%	0%
	1988	6	12	5	58%	42%	0%	0%
	1989	17	10	12	90%	10%	0%	0%
	1990	13	14	11	50%	43%	7%	0%
	1991	19	12	18	75%	25%	0%	0%
	1992	11	15	14	53%	40%	0%	7%
820 - Copyright	1987	20	10	22	90%	10%	0%	0%
	1988	14	21	15	48%	52%	0%	0%
	1989	14	12	17	83%	8%	0%	8%
	1990	16	20	13	70%	15%	10%	5%
	1991	13	12	14	67%	8%	25%	0%
	1992	13	14	13	71%	21%	7%	0%
210 - Land Condemnation	1987	13	3	16	100%	0%	0%	0%
	1988	10	15	11	67%	33%	0%	0%
	1989	5	11	5	45%	45%	0%	9%
	1990	11	4	12	75%	0%	25%	0%
	1991	24	19	17	95%	0%	5%	0%
	1992	5	15	7	73%	27%	0%	0%

Nature-of-suit code - description	Year	Filed	Termi- -nated	Pend ing	0-1 year	1-2 years	2-3 years	3 or more years
720 - Labor Management Relations	1987	7	7	8	71%	29%	0%	0%
	1988	9	9	8	44%	44%	0%	11%
	1989	6	7	7	57%	43%	0%	0%
	1990	12	12	7	67%	17%	0%	17%
	1991	13	9	11	89%	0%	0%	11%
	1992	11	10	12	80%	10%	10%	0%
850 - Securities, Commodities Exchange	1987	21	15	33	27%	53%	7%	13%
	1988	21	26	28	65%	15%	8%	12%
	1989	16	13	31	46%	46%	0%	8%
	1990	12	24	19	33%	29%	25%	13%
	1991	9	6	22	67%	33%	0%	0%
	1992	9	13	18	46%	15%	23%	15%

**EXHIBIT 9 TO APPENDIX F**

**MAGISTRATE JUDGE WORKLOAD**

The attached chart reflects the number and type of matters assigned to Magistrate Judges in this District between 1988 and 1992, including both criminal and civil cases. Data reflecting the individual workloads of Magistrate Judge Sandidge and Magistrate Judge Haynes between 1988 and 1992 are on file in the Clerk's Office.

**MAGISTRATE JUDGE WORKLOAD - NASHVILLE TN(M) 2F/T**

	<u>1988</u>	<u>1989</u>	<u>1990</u>	<u>1991</u>	<u>1992</u>
<b>MISDEMEANORS</b>	<b>40</b>	<b>35</b>	<b>42</b>	<b>20</b>	<b>11</b>
Traffic	2	2	1	0	0
Other	38	33	41	20	11
(Total Trials)	(2)	(0)	(0)	(0)	(0)
<b>PETTY OFFENSES</b>	<b>115</b>	<b>60</b>	<b>87</b>	<b>66</b>	<b>71</b>
Traffic	78	42	46	42	42
Immigration	0	0	0	0	0
Other	37	18	41	24	29
(Total Trials)	(33)	(25)	(23)	(14)	(21)
<b>PRELIMINARY PROCEEDINGS</b>	<b>703</b>	<b>751</b>	<b>866</b>	<b>953</b>	<b>774</b>
Search Warrants	38	38	134	136	58
Arrest Warrants	57	54	64	65	82
Initial Appearances	385	380	422	440	351
Detention Hearings	75	97	78	94	73
Bail Reviews	5	17	16	32	20
Preliminary Exams	37	54	26	63	69
Arraignments	69	62	78	74	66
Other	37	49	48	49	55
<b>ADDITIONAL DUTIES</b>	<b>434</b>	<b>453</b>	<b>600</b>	<b>749</b>	<b>671</b>
<b>Criminal</b>					
Motions §636(b)(1)(A)	2	1	2	0	0
Motions §636(b)(1)(B)	0	0	0	0	0
Pretrial Conferences	0	0	0	0	0
Evidentiary Hearings	1	0	1	0	0
Other	9	2	1	3	0
<b>Prisoner Litigation</b>					
State Habeas	4	18	14	26	23
Federal Habeas	12	2	2	0	3
Prisoner Civil Rights	168	257	216	217	206
Evidentiary Hearings	(104)	(84)	(65)	92	86
<b>Civil</b>					
Motions §636(b)(1)(A)	42	18	62	128	62
Motions §636(b)(1)(B)	87	79	161	142	102
Pretrial Conferences	24	9	35	48	49
Evidentiary Hearings	1	7	13	6	5
Special Masterships	19	28	24	15	23
Social Security	57	28	57	40	60
Other	8	4	12	32	52
<b>CIVIL CASES ON CONSENT</b>	<b>13</b>	<b>25</b>	<b>10</b>	<b>11</b>	<b>20</b>
Without Trial	12	19	7	6	17
Jury Trial	0	4	0	4	1
Nonjury Trial	1	2	3	1	2
<b>TOTAL</b>	<b>1305</b>	<b>1324</b>	<b>1605</b>	<b>1799</b>	<b>1547</b>